

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,  
HYDERABAD.**

Present:

*Mr. Justice Naimatullah phulpoto.*

*Mr. Justice Rasheed Ahmed Soomro.*

Cr. Appeal No.D-109 of 2016

Cr. Appeal No.D-110 of 2016

Cr. Appeal No.D-112 of 2016

Cr. Appeal No.D-118 of 2016

Cr. Appeal No.D-119 of 2016

Date of hearing: 08.02.2017.

Date of decision 08.02.2017.

Appellant : Sajjad alias Sajju (Cr. Appeal No.D-109/2016)  
Through Mian Taj Muhammad Keerio,  
Advocate.

Appellant : Jahangir alias Pishto (Cr. Appeal No.D-  
110/2016 and Cr. Jail Appeal No.D-11/2016)  
Through Mr. Shoukat Ali Kaka, Advocate.

Appellant : Ashraf (Cr. Appeal No.D-112/2016)  
Through M/s Mian Taj Muhammad Keerio,  
and Shoukat Ali Kaka, Advocates.

Appellant : Javed (Cr. Jail Appeal No.D-118/2016)

Respondent : The State  
Through Syed Meeral Shah, D.P.G.

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

**RASHEED AHMED SOOMRO-J:-** The appellants/accused Sajjad alias Sajju, Jahangir alias Pishto, Ashraf and Javed were tried by the learned Judge, Anti-Terrorism Court, Shaheed Benazirabad & Sanghar at Nawabshah for the offences under Sections 324, 353, 394,

34, 337-D, 337-F(iii) PPC read with Section 6/7 Anti-Terrorism Act, 1997. After full dressed trial, the appellants/accused were found guilty vide Judgment dated 27.10.2016, they were convicted under Section 7(h) of Anti-Terrorism Act, 1997, and sentenced to suffer three years R.I as 'Tazir' and were convicted under Section 337-F(iii) PPC, and sentenced to pay Daman at the rate of Rs.50,000/- each, in case of default to pay Daman the appellants/accused were ordered to suffer six months R.I more.

2. Brief facts of the prosecution case as depicted in the F.I.R. are that on 26.08.2014 at about 2100 hours the complainant ASI-Jan Muhammad Mashori of Police Station A-Section Nawabshah District Shaheed Benazirabad left Police Station vide entry No.22 along with his staff for patrolling in the area. During patrolling at various places the police party reached at DC Chowk at 2300 hours they saw on street light and head light of vehicle that three persons whose faces were opened, were standing beside a motorcycle of black colour and were armed with pistols. It is alleged that accused persons fired straight upon PC-604 Muhammad Nawaz Sehito who was posted as guard at the bungalow of learned IIIrd Additional District & Sessions Judge, Shaheed Benazirabad, who sustained injuries and fell down. The accused persons snatched official SMG of injured Police Constable and drove away on the motorcycle. Police party brought the injured police constable at People's Medical College Hospital Nawabshah for treatment and certificate. Such F.I.R. was lodged by ASI on behalf of State under Sections 324, 353, 394, 34 PPC vide Crime No. 167/2014 against three unknown persons. After registration

of F.I.R., during investigation accused Jahangir Pishto was arrested on 05.11.2014 from the jail where he was confined in some other crime. After completion of usual investigation, the challan was submitted against accused Jahangir Pishto showing the accused 1.Javed son of Ghulam Sarwar Leegar, 2.Sajjad Ali alias Sajju son of Roshan Leegar and 3.Ashraf son of Lado Leegar as absconders. The trial court initiated proceedings under Sections 87 and 88, Cr.P.C against the absconding accused and publication was made in different newspapers. Thereafter, on 21.11.2014 accused Sajjad alias Sajju was produced before the Trial Court under supplementary challan. On 25.11.2014, the S.H.O concerned produced another absconding accused Javed s/o Ghulam Sarwar before the Court under supplementary challan. Thereafter, accused Ashraf, in view of the statement of process Server recorded as Ex.06 was declared as proclaimed offender by the Trial Court.

3. The charge was framed against the accused Sajjad alias Sajju, Jahangir alias Pishto and Javed under Section 324, 353, 394, 34, 337-D, 337-F(iii) PPC read with Section 6/7 Anti-Terrorism Act, 1997, as Ex.10. Accused pleaded not guilty and claimed to be tried.

4. Accused Ashraf was arrested and produced before trial court. Amended charge was framed against the accused as Ex.15 to which all accused pleaded not guilty and claimed to be tried.

5. In order to substantiate the charge, prosecution examined P.W LPC-Abdul Latif as Exh.16, he produced mashirnama of injuries, mashirnama of blood stained clothes, mashirnama of place of incident

as Ex.16/A to 16/C, P.W ASI-Jan Muhammad as Exh.17, he produced departure entry No.22 dated 26.08.2014, and mashirnama of arrest of accused Sajjad as Exh.17/A and 17/B, P.W ASI-Shahzad Khan as Exh.19, he produced mashirnama of arrest as Exh.19/A, P.W Ghulam Nabi as Exh.20, PW ASI Sabir Hussain Gopang as Exh.21, he produced imaginary mashirnama of arrest of accused Jahangir alias Pishto Leegar as Exh.21/A, P.W Muhammad Nawaz Sehito as Exh.22, P.W Dr.Imtiaz Ali Chandio as Exh.23, he produced police letter, three X-Ray reports, provisional medical certificate dated 27.08.2014, findings of Laboratory by the Surgical Unit Team-II alongwith seventy two sheets of record of treatment of injured, four X-Ray and Final Medical Certificate as Ex.23/A to 23/M, PW Zameer Hussain as Ex.24, he produced letter of SSP Shaheed Benazirabad for constitution of Special Team, entries Nos.9 and 14, Final Medico Legal Certificate, Chemical report, photographs of place of incident as Exh.24/A to 24/G, thereafter prosecution side was closed at Exh.25.

6. The statement of accused were also recorded under Section 342 Cr.P.C at Ex.26 to 29 in which the accused denied prosecution allegations, and stated that P.Ws being police officials were interested in the case and false F.I.R. has been registered against them. The accused did not examine themselves on oath. No witness has been examined by the accused in their defence.

7. Trial Court after hearing the learned counsel for the parties and assessment of the evidence, convicted the accused and sentenced as stated above. Hence the accused have filed present Criminal/Jail Appeals against impugned Judgment.

8. The facts of the prosecution case and evidence produced by the prosecution have already been mentioned by the trial Court in detail, therefore, there is no need to repeat the same.

9. M/s Mian Taj Muhammad Keerio and Shoukat Ali Kaka appearing for the appellants contended that all the prosecution witnesses are police officials, and interested in the case and no independent person has been examined to prove the version of prosecution. It is further contended that there are material discrepancies / contradictions in the evidence of prosecution witnesses, which create doubt in the prosecution case. In support of their contentions, reliance is placed upon the cases of **AZHAR MEHMOOD v. THE STATE** [2017 S.C.M.R. 135] and **SAID AHMAD v. ZAMMURED HUSSAIN** [1981 SCMR 795]

10. Syed Meeral Shah Bukhari, learned D.P.G. argued that all the prosecution witnesses have fully implicated the accused in the commission of the offence. Learned D.P.G. argued that no doubt identification parade was not held but accused were identified by the prosecution witnesses in the court. He further submitted that evidence of the police officials is good as of private persons because no malafide against the police officials have been proved. He has supported the judgment of the trial court.

11. After hearing the learned counsel for the parties we have gone through the evidence minutely.

12. Record reflected that P.C. Muhammad Nawaz sustained firearm injuries at the hands of three unknown persons on 26.3.2014 at 2300 hours at the bungalow of III-Additional Sessions Judge Nawabshah. During investigation appellants Jehangir alias Pishto, Jawaid and Sajjad alias Sajju were arrested in this case but after their arrest no identification parade was

held. Investigation Officer had arrested the accused persons on the ground that he had received spy information that present accused were involved in the commission of the offence. Injured P.C. Muhammad Nawaz deposed that in fact there were six accused persons but injured P.C. had not described the features of the accused in his 161 Cr.P.C. statement. Admittedly it was night time incident. Identification of the accused on headlight of vehicle and street light was weak source of identification and in the peculiar circumstances of the case, it was highly doubtful. As regards to the identification of the culprits before the trial court it was unsafe to rely for conviction as it has been held by the Honourable Supreme Court in the case of **AZHAR MEHMOOD v. THE STATE** reported in 2017 S.C.M.R. 135. Relevant portion is reproduced as under:-

*“3. It has straightaway been noticed by us that the occurrence in this case had taken place after dark and in the FIR no source of light at the spot had been mentioned by the complainant. Although in the site-plan of the place of occurrence availability of an electric bulb near the spot had been shown yet no such bulb had been secured by the investigating officer during the investigation of this case. The present appellants had not been nominated in the FIR wherein it had been mentioned that the offences in issue had been committed by six unknown culprits but later on it had been maintained by the prosecution that the present appellants had been overheard by a witness discussing amongst themselves the commission of offences by them relevant to the dacoity and murders taking place at the house of the complainant. It was in that dubious background that the present appellants had been arrested on 24.09.2001 and later on they had statedly been identified, by the eye-witnesses namely Muhammad Ramzan complainant (PW15) and Arif Ali (PW16) in the test identification parades conducted on 01.10.2001 and 08.05.2002. We have gone through the statements made by the*

*supervising Magistrates, i.e. PW5 and PW 10 as well as the proceedings of the test identification parades and have straightaway noticed that in the said parades the present appellants had not been identified with reference to any roll played by them in the incident in issue. It has consistently been held by this Court that such a test identification parade is legally laconic and is of no evidentiary value and a reference in this respect may be made to the cases of Khadim Hussain v. The State (1985 SCMR 721), Ghulam Rasul and 3 others v. The State (1988 SCMR 557), Asghar Ali alias Sabah and others v. The State and others (1992 SCMR 2088), Mehmood Ahmed and 3 others v. The State and another (1995 SCMR 127), Siraj-ul-Haq and another v. The State (2008 SCMR 302, Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Shafqat Mehmood and others v. The State (2011 SCMR 537), Sabir Ali alias Fauji v. The State (2011 SCMR 563) and Muhammad Fayyaz v. The State (2012 SCMR 522). During the trial the above mentioned eye-witnesses had maintained that the appellants facing the trial were the actual culprits and they courts below had found such identification of the appellants during the trial to be of significance. We, however, note that both the above mentioned eye-witnesses, i.e. P.W15 and PW16 had appeared before the trial Court after 14 prosecution witnesses had already made their statements before the trial Court and on all such occasions the present appellants were physically present in the dock and, thus, the above mentioned eye-witnesses had ample opportunities to see the present appellants in the courtroom on all such occasions. Even prior to that the appellants had been produced before the trial court at the time of framing of the charge and even at the time of obtaining remand from the concerned forum. This is why identification of a culprit before the trial court during the trial has repeatedly been held by this Court to be unsafe and a reference in this respect may be made to the cases of Asghar Ali alias Sabah and others v. State and others (1992 SCMR 2088),*

*Muhammad Afzal alias Abdullah and another v. State and others (2009 SCMR 436), Nazir Ahmed v. Muhammad Iqbal (2011 SCMR 527), Shafqat Mehmood and others v. The State (2011 SCMR 537) and Ghulam Shabbir Ahmed and another v. The State (2011 SCMR 683). As regards the alleged recovery of weapons from the appellants' custody during the investigation suffice it to observe that the recovered firearms had not matched with the crime-empties secured from the place of occurrence and the alleged recoveries had been discarded by the High Court. The medical evidence produced by the prosecution could not point towards any particular culprit. The only remaining piece of evidence produced by the prosecution was in respect of an alleged abscondance of Muhammad Altaf appellant but in the circumstances of the case we have not found the alleged abscondance of the said appellant to be totally inconsistent with the hypothesis of his innocence.*

*4. For what has been discussed above a conclusion is inescapable that the prosecution had failed to prove its case against the appellants beyond reasonable doubt. These appeals are, therefore, allowed, the convictions and sentences of Azhar Mehmood, Muhammad Altaf, Azam Sher and Asad Ali appellants are set aside and they are acquitted of the charge by extending the benefit of doubt to them. They shall be released from the jail forthwith if not required to be detained in connection with any other case.*

It is admitted fact that after arrest of accused no identification parade was held. Evidence of injured P.C. was not straight forward and confidence inspiring. It is settled law that injured witness, would not be relied upon ipso facto, because of injuries but is to be examined that whether the evidence is trust worthy and confidence inspiring. Reliance is placed upon the case of SAID AHMAD v. ZAMMURED HUSSAIN [1981 SCMR 795] wherein it has been held as under:-



“It is correct that the two eye witnesses are injured and the injuries on their person do indicate that they were not self-suffered. But that by itself would not show that they had, in view of the afore-noted circumstances, told the truth in the court about the occurrence; particularly, also the role of the deceased and the eye-witnesses. It cannot be ignored that these two witnesses are closely related to the deceased while the two other eye witnesses mentioned in the F.I.R., namely, Abdur Rashid and Riasat were not examined at the trial. This further shows that the injured eye-witnesses wanted to withhold the material aspects of the case from the court and the prosecution was apprehensive that if independent witnesses are examined, their depositions might support the plea of accused.”

13. There is no piece of evidence produced by the prosecution to connect the appellants in the commission of the offence.

14. For the above stated reasons we have come to the conclusion that prosecution had failed to prove its case against the appellants beyond reasonable doubt. These appeals are, therefore, allowed, the conviction and sentence awarded to appellants Sajjad alias Sajju, Jahangir alias Pishto, Ashraf and Javed are set-aside and they are acquitted of the charge by extending benefit of doubt to them. They shall be released from the Jail forthwith if not required to be detained in connection with any other case.

These are the reasons for our short order dated 08.02.2017.

JUDGE

JUDGE

A.

