IN THE HIGH COURT OF SINDH AT KARACHI

CRIMINAL APPEAL NO.180/2016

Appellant : Danish.

Respondent : The state.

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CRIMINAL APPEAL NO.183/2016

Appellant : Syed Muhammad Awais.

Respondent : The state.

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Date of hearing : 26.03.2019.

Date of short order : 26.03.2019.

M/s. Tajamul H. Lodhi and Farooq Akhtar Shaikh advocates, for appellant in Cr. Appeal No.183 and 180 of 2016 respectively.
Mr. Faheem Hussain Panhwar, DPG.

O R D E R

SALAHUDDIN PANHWAR, J. Appellants through their respective appeals have assailed judgment dated 06.04.2016 in Sessions Case No.682/2011 arising out of FIR No.193/2011, under sections 302, 396, 34 PPC, PS New Karachi, whereby appellants were convicted and sentenced for imprisonment for life with R.I. and to pay fine of Rs.100,000/- each in default of payment whereof to suffer S.I. of one year more.

2. Prosecution case is that on 24.09.2011 in between 1830/1845 hours vide Roznamcha entry No.55 from Abbasi Shaheed Hospital, recorded statement of complainant Muhammad Wajid under Section 154 Cr.P.C who disclosed that he was present at home

when he received call from the son of his sister Ahsan Iqbal that Danial received bullet injury and that he was present at Abbasi Shaheed Hospital; complainant reached at Abbasi Shaheed Hospital, where he saw the dead body of his nephew Danial. He came to know that at about 6:30 p.m deceased Danial and his friends Sikandar Khan, Mohsin and Bilal were going on motorbike No.KDR-6451 to *Bi Amma* Park, when they reached near Alam Pride, four boys came behind them on two motorcycles and signaled to stop and meantime out of them one boy started firing and they fled away and these four boys fell down with motorcycle and Daniel, Mohsin and Bilal ran away however Sikandar remained there in fallen condition; after sometime Mohsin and Bilal returned back at the spot but Danial Khan did not came back and was found in injured condition at service road; they took him towards Abbasi Shaheed Hospital but in the way Danial succumbed to the injuries.

3. Formal charge was framed against the accused (Exhibit 2) to which accused pleaded not guilty (vide Exhibits 2/A & 2/B) and claimed to be tried. The prosecution examined in all 7 witnesses namely complainant PW Muhammad Wajid, PW Sikandar Khan, PW Fida Hussain Abbasi (Civil Judge/J.M), PW Muhammad Mohsin, PW ASI Ashar Alam, PW Dr. Muhammad Saleem and PW SI Sheikh Ismail as exhibits 3 to 9 respectively. The statements of accused was recorded at exhibits 13 & 14 wherein they denied the allegations of prosecution and claimed to have been falsely implicated in this case, they did not examine themselves on oath under Section 340(2) Cr.P.C. and also did not lead any evidence in their defence. Learned ADPP moved an application for amendment of charge, same was allowed, amended charge was framed, to which accused also did not pleaded guilty and claimed to be tried.

4. Trial court framed and answered the issues as follows:-

Point No.1. Whether the deceased Daniyal died unnatural death due to sustain fire arm injury, as alleged ?	In affirmative
Point No.2. Whether present accused duly armed with deadly weapons alongwith their companions, during committing robbery made firing with intention to commit *Qatl-e-Amd* upon the nephew of complainant namely Daniyal, who sustained fire arm injuries on his person and died during shifting to hospital, as alleged ?	In affirmative
Point No.3. What offence, if any, has been committed by the present accused?	Both the accused are convicted under section 265-H(ii) Cr.P.C.

5. I have heard learned counsel for appellants and learned DPG and perused the record.

6. Learned counsel for appellants have contended that impugned judgment is based on evidence of only two witnesses namely Sikandar and Muhammad Mohsin who are related to complainant who is an advocate by profession who inspite of fact that he is not an eye witness but played vital role and influenced the trial court throughout the trial; PWs are interested witnesses; there is no eyewitness who deposed as to which accused fired; charge was framed against Muhammad Owais and Danish while in charge sheet name of Muhammad Owais and Muhammad Danial has been mentioned; that appellant Danish is a H*afiz-e-Quran* and matriculated, not involved in any previous case/crime; that prosecution is silent on the points as to which accused signaled to stop and which accused demanded the mobile phone; there are various contradictions in evidence of prosecution witnesses; FIR was

registered under section 396/34 PPC while challan was submitted u/s 302/396/34 PPC whereas conviction was awarded u/s 396 PPC while ingredients of that section are missing from the evidence collected; there is unexplained delay of 6 hours in lodgment of FIR as well there is delay in identification parade without giving details and discrepancies of the dummies and specific role of accused; hence impugned judgment is without application of judicial mind, illegal, unlawful and bad in the eyes of law besides being based on surmises and conjectures.

7. Learned DPG has contended that impugned judgment is well reasoned, just and proper hence is liable to be upheld.

8. The perusal of the *impugned* judgment shows that learned trial court observed as:-

> *"I have thoroughly appreciated the evidence on record in the light of submissions made by both the learned counsel for the parties. It transpires from the record that the occurrence took place on 05.10.2011 at 06:30 p.m and matter was reported to the police at Abbasi Shaheed Hospital at 1950 hours, without loss of time. Thus, it is promptly lodged report and the complainant had no occasion to make deliberations in falsely implicate the accused with whom he had no enmity whatsoever..."*

9. I am surprised that how promptness or delay in lodging an FIR against ***unknown persons*** could be of any significance?. However, promptness always eliminates possibility of deliberation, therefore, same always matter even in such like *FIR*s least to extent of manner of incident. The learned trial court judge though attached weight to promptness of the FIR but never appreciated that very first version of the prosecution came on surface through mouth of the claimed eye-witness **Sikander** , so depicting from Form No.25-35(i)(A) i.e Report of Sudden death from natural courses (Exh.14/B). It is mentioned in *English version* of such document as:-

> *"18. Brief facts of the case.*
>
> *Brief facts of the case are that; the person named Sikandar the friend of deceased named Daniyal s/o Mujeeb A. Rehman, on inquiry, disclosed that "We all four friends namely: Daniyal, Mohsin and Bilal riding on our motorcycle were going to Bi Amma Park for visiting that when we reached near Sanoobar Cottage that **four boys came behind on two motorcycles** and **signaled to stop** and meanwhile, **made fire and fled away from the spot** and one bullet sustained to Daniyal, to whom we took to Abbasi Shaheed Hospital that he succumbed to his injury on the way and died away".*

The complainant, not being the eye-witness, also reaffirmed the above version while recording his statement under section 154 Cr.P.C as well examination-in-chief as:-

> "... When I inquired about the incident deceased Daniyal's friends namely **Sikandar, Mohsin and Bilal** disclosed that we all along with deceased Daniyal were going to B-Ama Park on our way **two motorcyclists upon which four accused persons were sitting intercepted us so we had slow down motorcycle and were to stop when persons sitting behind on one of the motorcycle made fired towards our motorcycle which hit Daniyal ue to which our motorcycle also fell down and Daniyal, Mohsin and Bilal tried to run and Sikander remained there as he has fallen down from the motorcycle. The motorcyclists who made fired escapedf away and...**

10. From above, it was quite clear that *initially* the prosecution had alleged **four unknown persons** on **two motorcycles** as **culprits** and had assigned no **motive** for firing from side of the these **culprits** however, it is a matter of record that during course of trial the prosecution *materially* improved its case whereby reduced the numbers of **culprits** from '**four** to **two'** on a single **motorcycle** and also introduced a motive i.e **demand of mobile phone** by culprits. This position was always evident from evidence of the eye-witness namely **Muhammad Mohsin** (Ex.6) when he stated in his examination-in-chief as:-

> "...It was about 6:30 to 7:00 p.m. Sikandar was driving the motorcycle on low track and on the back seat Daniyal was sitting and then myself and Bilal and when we reached near ABC school

> where **two persons came on one motorcycle** in the meantime the **Daniyal was using his mobile phone.** Out of them one accused who was seated at seat of the motorcycle has demanded mobile phone from Daniyal by giving abuse upon which I said to my friend Daniyal to stop the motorcycle then we will have to give the mobile phone to the said person. On back of our motorcycle two other motorcycles were going on there of which one person raised hue and cry as a result back seated accused made straight fire upon us due to which we four fallen down....

Such *material* improvements were never appreciated by the learned trial court judge while recording the conviction though legal position for such witnesses, making improvements, stands clear in law as reiterated in the case of *Sardar Bibi & another v. Munir Ahmed & Ors* 2017 SCMR 2017 SCMR 344 that:-

> "2.... According to doctor , there was only one fire-arm entry wound on the chest of the deceased Zafar Iqbal. In order to meet this situation, witnesses for the first time , during trial made omission and did not allege that the fire shot of Sultan hit at the chest of Zafar Iqbal, deceased. So the improvements and omissions were made by the witnesses in order to bring the case of prosecution in line with the medical evidence. Such dishonest and deliberate improvement and omission made them unreliable and they are not trustworthy witnesses. It is held in the case of *Amir Zaman v. Mehboob & Ors* (1985 SCMR 685) that testimony of witnesses containing material improvements are not believable and trustworthy. Likewise in *Akhtar Ali's case (2008 SCMR 6)* it was held that when a witness made improvement dishonestly to strengthen the prosecution's case then his credibility becomes doubtful on the well-known principle of criminal jurisprudence that improvement once found deliberate and dishonest, caste serious doubt on the veracity of such witness. In *Khalid Javed's case (2003 SCMR 149)* such witness who improved his version during the trial was found wholly unreliable. Further reference in this respect may be made to the cases of *Muhammad Shafique Ahmed v. The State (PLD 1981 SC 472), Syed Saeed Muhammad Shah and another v. The State 1993 SCMR 550) and Muhamamd Saleem v. Muhammad Azam (2011 SCMR 474).*

11. Be that as it may, the learned trial Court judge also failed in appreciating that both the eye-witnesses namely Sikandar and

Muhammad Mohsin never supported each other while giving details of incident during their examination-in-chief. To make it easy the respective portions are placed in *juxta-position* as:-

PW Sikandar Khan	
On 24.09.2011 I was present at my flat situated at Alam Pride along with Mohsin, Danial and Bilal and then we made program for visiting the Amma Bi Park situated at near Nagan Chowrangi, New Karachi, I was driving motorcycle Danial, Mohsin and Bilal were sitting behind me I noticed a bike having two persons on it are coming besides my motorcycle on right side and another bike which was behind our motorcycle the motorcyclist who was on my right side asked me to stop the motorcycle asked me to stop the motorcycle and I was to stop the motorcycle when he abused me and I was told him that I am stopping but he fired upon us due to firing my motorcycle was misbalanced and we all four fell down…	On 24.9.2011 I along with my friends Daniyal, Sikandar and Bilal for going to Ama Park at that time there is no electricity. It was about 6:30 to 7:00 p.m. Sikandar was driving the motorcycle on low track and on the back seat Daniyal was sitting and then myself and Bilal and when we reached near ABC school where two persons came on one motorcycle in the meantime the Daniyal was using his mobile phone. Out of them one accused who was seated at seat of the motorcycle **has demanded mobile phone from Daniyal by giving** abuse upon which **I said to my friend Daniyal to stop the motorcycle then we will have to give the mobile phone to the said person.** On back of our motorcycle two other motorcycles were going on there of which one person raised hue and cry as a result back seated accused made straight fire upon us due to which we four fallen down....

12. The PW Sikander, no where, spoke about demand of **'mobile phone'** while PW Muhammad Mohsin does. The PW Sikander, no where, claims any *direct* interaction between culprits and **Danial** while the PW Muhammad Mohsin does. The examination-in-chief of the PW Sikander denies any **reason / motive** for firing upon them while the PW Muhammad Mohsin does hence both these eye-witnesses were never supporting each other on material aspects hence the benefit thereof was always to be given to accused. This, *however,* was never appreciated by the learned trial Court judge.

13. The learned trial court judge also gave much weight to failure of the appellant in pin-pointing *enmity* against the prosecution witnesses and observed as:-

> "..It is true that the complainant is paternal uncle and PW Sikandar Khan and Muhammad Mohsin are friend of the deceased and **as such are interested witnesses,** but there is nothing on file to show that they have falsely implicated the accused. .....I have found that the said witnesses have no motivation to falsely implicate the accused in a case of this nature.
>
> 23. There was no previous enmity of serious nature between the parties actuating the eye-witnesses to nominate the accused falsely and allow the real culprit to go scot (escort) free. **Substitution in a case of single accused is rare phenomenon**. In the absence of any previous enmity between the parties, **the testimony of complainant and PW2 & PW-4 do not suffer from any legal infirmity warranting outright rejection.**.

14. Again, I am unable to appreciate such approach of the learned trial court judge because it is well settled principle of law that absence of *enmity* or failure of the defence in proving any *enmity* can ever be sufficient for **acquittal** or **conviction.** These may reflect as *circumstance* for or against but can never be taken as **decisive.** Reference, if any, may well be made to the case of *Azeem Khan & another v. Mujahid Khan & Ors* 2016 SCMR 274 wherein it is held as:-

> 29. The plea of the learned ASC for the complainant and the learned Additional prosecutor General, Punjab that because the complainant party was having no enmity to falsely implicate the appellants in such a heinous crime thus, the evidence adduced shall be believed, **is entirely misconceived one.** It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person. Even evidence of uninterested witness, not inimical to the accused may be corrupted deliberately while evidence of inimical witness, if found consistent with the other evidence corroborating it, may be relied upon. Reliance in this regard may be placed on the case of *Waqar Zaheer v. The State* (PLD 1991 SC 447)

15. Further, it is needles to remind that *initially* the case was lodged against **four unknown persons** but later the same reduced to **two** however, prosecution case was never of **single accused'** hence referral to position of ***single accused*** was never of any relevance in this matter.

16. Further, the learned trial court judge also failed in appreciating that even the alleged eye-witnesses never established their presence because the witnesses Sikander Khan and Muhammad Mohsin had categorically claimed that they had taken the deceased to hospital through a ***rikshaw***. The PW Muhammad Mohsin further detailed as:-

> "..then Bilal went towards Nala side and saw that the Daniyal was in injured condition near footpath. Upon which Bilal called me then I along with Sikandar went there and saw the Daniyal in injured condition. We took the Daniyal on the main road for help but no one was stop to help us. At just one rickshaw reached there and took us near Saleem Centre where he dropped us due to non-availability of CNG in the rickshaw. Thereafter we hired another rickshaw and I was seat n front seat with the driver and other were at back seat of the said rickshaw with Daniyal. ..

17. This witness in his cross admitted that:

> *"We three took Daniyal to hospital in rickshaw and Sikander was holding Daniyal"*

Despite carrying an injured person, surprisingly, none of these clothes, including PW Sikandar, got their clothes stained with blood. The PW Sikandar, to a question, answered as:-

> *"There was no blood stained upon my cloths when I took the deceased Danial in my lap because the bullet passed from the right elbow / arm through tearing gall bladder and only his urine came out and no blood oozed out.*

Such explanation was never worth believing and even stands belied by memo of inspection of dead body (Ex.No.4/A) which says as:-

> *"... one bullet entered towards right side of waist and exited left side from above of waist and due to which, death has occurred* **due to oozing out blood".**

Further, though these witnesses claimed in their evidences that they had fallen of the motorcycle while the PW Sikandar claimed to have stuck under the motorcycle but none of these witnesses claimed to have received any *scratches.* Thus absence of blood on cloths of these PWs was always causing a serious doubt towards presence of these witnesses at the spot. Reference is made to case of *Shahzad Tanveer v. State* 2012 SCMR 172 wherein it is observed as:-

> 13. It is strange that none of the accused carried any weapon except a small kitchen knife, the total length and width of which was 6-1 x ½ including its handle while going to commit a capital offence. It is also more strange that none of the P.Ws dared to physically intervene in order to save the victim or apprehend the accused at the spot. Neither the clothes of any P.W got stained with blood nor had they received any scratch on their persons. **In this view of the mater the presence of the P.Ws at the time of occurrence appears to be doubtful.**

18. I would further add that even for motorcycle on which all three eye-witnesses and deceased were riding was never produced nor was collected by the investigating officer. For removal of motorcycle from place of incident, there came no explanation however the PW Muhammad Mohsin , while making improvements, stated as:-

> ..It is correct to suggest that we have left the motorcycle and place of incident while went to the hospital. One of our mohalla boys was passing there and we have asked from him to take our motorcycle and this fact is not mentioned in my statement u/s 161 Cr.PC...

Such was made as an explanation but admittedly none of the witnesses had claimed so hence this was a *pure* improvement with an

attempt to remove clouds over their claimed presence. In the case of *Mst. Rukhsana Begum & Ors v. Sajjad & Ors* 2017 SCMR 596 it was held as:-

> A single doubt reasonably showing that a witness / witnesses' presence on the crime spot was doubtful when a tragedy takes place would be sufficient to discard his / their testimony as a whole. …

19. The above discussion is sufficient to show that ocular account was never free from **reasonable doubts** hence the prosecution case was never strong enough to hold the conviction.

20. The perusal of the record shows that while recording the statement of the appellants / accused the learned trial court judge never confronted them with claimed evidences i.e **'medical evidence, including post mortem; identification parade; recovery of empty from place of incident as well 30 bore pistol** hence the same were never available for consideration while writing the judgment of conviction. Reference may be made to case of *Qaddan & Ors v. State* 2017 SCMR 148.

21. However, as an abandon caution, I would examine the claimed **identification** of the appellants as **culprits** of instant case. Without prejudice to disputed position the **culprits** were '**four'** or **'two'** it is not disputed that they (culprits) were not known to the witnesses and they had *glimpses* of them *only* which, *too,* when **culprits** were riding on motorcycle. These witnesses, though claimed to have been in position to identify the **culprits** however, in their 161 Cr.PC statements did not disclose *Hulias* of culprits. In such eventuality the *disclosure* of **culprits** was always dependant upon ***identification*** by these witnesses, therefore, whenever a *suspect* in such like cases is arrested it becomes the absolute responsibility of

the investigating agency to ensure that **'such suspect is kept away from eyes of witnesses till the time he (*suspect)* is properly picked in a *proper* identification parade'.** There have been *plethora* of cases however reference to recent case of *Javed Khan v. State* 2017 SCMR 524, being referral to earlier views, is made hereunder:-

> "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 Sind 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 parade, but there is a clear possibility arising out of their statements that they were assisted to do so by being shown the accused persons 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 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).
> *(bolding is mine for emphasis)*

22. At this juncture, it is relevant to add that introduction of the appellants (accused persons) to be culprits of instant case is

based upon their so called admissions, made before the police when they allegedly were arrested by the Crime Branch, so is evident from evidence of PW SI Sheikh Ismail (Exh.11) as:

> *"During interrogation of instant Crime the both accused were arrested by crime branch on 05.10.2011, during interrogation both the accused admitted regarding commission of instant crime".*

Needless to such **admission** is not admissible but could only help the investigating officer to proceed further so as to :

i) get such *suspect* properly got identified from eye-witnesses;

ii) effect recovery, if any;

iii) get recorded confession *properly*;

iv) to effect other corroborative evidences, including but not limited to circumstantial one;

However, *prime* duty shall always be to get proper **identification** done which could not be hoped unless such suspect is kept away from eyes of the witnesses, as insisted in case of *Javed* supra.

23. I would add that such duty becomes double when the eye-witnesses have given the *details* of Hulia / description or claimed to have got prepared **sketches** as was claimed by the eye-witness Sikandar in the instant case when he admitted in his evidence as:-

> *"..On 05.09.2011 (one day after incident) we went to C.P.L.C where I disclosed the description and hulia of accused persons and the concerned authorities prepared their sketches".*

24. The above claim *prima facie* shows that investigating officer, being in possession of the ***sketches,*** was never required to show the *suspect* to eye-witnesses before proper identification, however, the admissions of the eye-witness PW Sikandar narrates otherwise. The relevant portion of his evidence reads as:-

> *"..On 05.10.2011 I along with complainant Wajid and SHO Muzafar Shah went to crime branch Karachi where I identified both accused persons who were already arrested at the crime branch where SHO Inspector Syed Muzzafar Shah prepared memo of arrest of both accused persons and obtained our signatures on it.."*

The above admission was always sufficient to bring the vitality and legality of ***identification parade*** to nullity.

25. Be that as it may, it has also been the matter of record that at time of ***identification parade*** there came *written* objection to the effect that the accused persons (appellants) have been brought with open faces though the PW Fida Hussain, Civil Judge & JM Karachi (Exh.5) declined such application (s) but did admitted in his cross-examination as:-

> "It is correct to suggest that witnesses had not disclosed the **role which was done by the accused persons**..... It is correct to suggest that witnesses have not disclosed the hulia or height of the accused persons. It is correct to suggest that the identification parade **was jointly held**.....It is correct to suggest that at the time of identification parade, **the advocate Mr. Wajid was available in court**. I do not remember the I.O has informed me that the arrested were arrested on 05.10.2011 in other case of 13-D Arms Ordinance. Only the matter was referred to me for conducting identification parade **and the accused persons were on remand of some other courts**. ...It is correct to suggest that an application was moved before me that the accused should not be brought with covered faces for identification parade and I passed order on both applications. It is correct to suggest that I have not mentioned such fact in my identification parade".

26. The identification was conducted on **20.10.2011** while the appellants were arrested on **05.10.2011** in other case crime hence were being produced in courts for remand purpose and even on date of identification they (appellants) were *admittedly* on remand of some other courts, thus, such like identification was never safe to be relied upon particularly when the witnesses only had glimpses of

culprits. Further, the investigating officer admitted in his cross-examination as:-

> "It is correct to suggest that I did not informed (inform) in writing to the magistrate that **identification of both accused was held in crime branch.**

27. Such admission on part of the investigating officer was always sufficient to bring ***identification*** of the appellants under serious clouds. While dealing with *almost* similar facts and circumstances in case of *Javed v. State* supra, the honourable Apex Court declared such like *identification* as not safe while observing as:-

> 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 there was no benchmark against which to test whether the appellants, who he had identified after over a year of the crime, and who 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 Ahmed Khan (PW 6) as one of them. Nonetheless Subedar Mehmood Ahmed 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 serous 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. … In *State v. Farman (PLD 1985 SC 1)* , the majority judgments 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 I the unanimous judgment of

> this Court, delivered by Nasir Aslam Zahid J, in the case of *Muneer Ahmed 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 raised 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***.

28. Further, as regard the recovery of empty from place of incident, it would suffice to refer relevant portion of cross-examination of the investigating officer that :

> *"It is correct to suggest that empty bullet was not sealed at the spot".*
>
> *It is correct to suggest that empty bullet of 30 bore was recovered from place of incident on 25.9.2011. I did not send empty bullet of 30 bore to the FSL. It is correct to suggest that I did not show that empty bullet as case property".*

Thus, such recovery and even Forensic report was of no legal weight, even if would have been brought to notice of the appellants while recording their 342 Cr.PC statements as was viewed by honourable Apex Court in case of *Javed v. State* supra.

29. All the above discussion is sufficient to safely conclude that prosecution never succeeded in proving the charge against the appellants / convicts beyond reasonable doubts hence the conviction, recorded against the appellant, cannot sustain because it is another settled principle of law that a single reasonable doubt is sufficient to earn acquittal not as grace but as ***right*** so was held in case of *Muhammad Mansha v. state* 2018 SCMR 772 as:

> '4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right.

30. While parting, I am compelled to refer admissions, made by the Investigating officer, during his cross examination as:-

> *It is correct to suggest that I did not record the confessional statement of accused before the magistrate. It is correct to suggest that I did not search the motorbike which was used by the accused in commission of crime. It is correct to suggest that nothing was recovered from the possession of accused"*
>
> *It is correct to suggest that I did not take the blood stained cloths of deceased in my possession"*

These admissions, *prima facie,* show the incompetence of the investigating officer who, otherwise, assigned the investigation of a case of *capital punishment*, therefore, copy of this order be sent to Prosecutor General Sindh for action against delinquent as well for guidance in conducting investigation in such like matter.

These are the reasons of short order dated 26.03.2019 whereby appeals were allowed.

J U D G E

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