

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Criminal Jail Appeal No. 226 of 2020**

Appellants: Muhammad Daim and Shoaib Shabbir through M/s. Muhammad Munsif Jan a/w Muhammad Imran, Abdul Rehman and Qaim Ali Memon, advocates

The State: Mr. Khadim Hussain Khuharo, Additional Prosecutor General Sindh

Date of hearing: 22.08.2023

Date of judgment: 22.08.2023

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

**IRSHAD ALI SHAH, J-** It is alleged that the appellants during course of robbery besides committing murder of Imran Ahmed Khan, caused fire shot injuries to PW Salman Ahmed Khan, for that they were booked and reported upon by the police. At trial, they denied the charge and prosecution to prove the same, examined complainant Zeeshan Ahmed Khan and his witnesses and then closed its side. The appellants during course of their examination under Section 342 Cr.P.C denied the prosecution's allegation by pleading innocence; they did not examine anyone in their defence or themselves, on oath to disprove the prosecution's allegation against them. On conclusion of trial, they were convicted under Section 302(b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs.100,000/- each to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for one month, with benefit of Section 382(b) Cr.PC; no punishment however was awarded to either of the appellants for committing robbery, by learned VIIth-Additional Sessions Judge (MCTC), Karachi Central vide judgment dated 23.01.2020, which they have impugned before this Court by preferring the instant Criminal Jail Appeal.

2. It is contended by learned counsel for the appellants that they being innocent have been involved in this case falsely by the police in a blind FIR, on the basis of defective identification parade and the

evidence of the PWs being doubtful in its character has been believed by the learned trial Court without lawful justification, therefore, they are entitled to be acquitted by extending them benefit of doubt, which is opposed by learned Addl. PG for the State by supporting the impugned judgment by contending that on arrest from the appellants have been secured the pistols which allegedly were used by them in commission of incident and prosecution has been able to prove its case against them beyond shadow of doubt.

3. Heard arguments and perused the record.

4. The incident is alleged to have taken place on 04.07.2017, it was reported to police by the complainant on 07.10.2017, it was with delay of about 03 days yet it does not contain names and descriptions of the appellants, which appears to be significant. Once, the case was disposed of by the police under `A` Class. Subsequently, it was opened. It was stated by I.O/SIP Aijaz Ahmed that on coming to know about the involvement of the appellants in commission of the present incident, he went at the District Jail Malir, there on inquiry the appellants admitted their guilt before him; on such admission, they were arrested by him formally in the present case, on 28.12.2017 under memo and then they were taken to the place of incident, there they also confessed their guilt before the complainant. If for the sake arguments, it is believed that the appellants actually had confessed their guilt before the complainant or the said I.O/SIP during course of investigation even then such confession being extrajudicial in nature in terms of Article 39 of Qanun-e-Shahadat Order, 1984 could not be used against them as evidence. It was further stated by said I.O/SIP that on 02.01.2010 on pointation of the appellants he secured two pistols which they kept concealed beneath container lying in open plot adjacent to Arshi Shopping Centre Federal B. Area Karachi, under memo prepared in presence of PC Muhammad Ashfaq and PC Muhammad Farhan; Such recovery, if any, ought to have been made in presence of independent/private persons to exclude the possibility of foistation. It was further stated by said I.O/SIP that on 04.01.2018

he produced the appellants before Mr. Asghar Ali, the Magistrate having jurisdiction for conducting their identification parade through PW Salman Ahmed Khan. As per Mr. Asghar Ali, it was fixed on 05.01.2018. It was not to have been adjourned, such adjournment might have provided a chance to PW Salman Ahmed Khan to have a glimpse of the appellants before the identification proceedings. By such identification parade PW Salman Ahmed Khan identified the appellants to be responsible for the present incident. The identity of the appellants by PW Salman Ahmed Khan during course of identification without disclosure of their descriptions in his 161 Cr.P.C statement could reasonably be judged with doubt. Be that as it may, such identification parade was conducted on 07<sup>th</sup> day of actual arrest of the appellants in the present case. No plausible explanation to such delay is offered, therefore, such delay could not be overlooked. The forensic report is in positive; such report alone could hardly be made a reason to maintain conviction against the appellants. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they are entitled.

5. In case of *Muhammad Jamil vs. Muhammad Akram and others (2009 SCMR 120)*, it has been held by the Apex Court that;

*“When the direct evidence is disbelieved, then it would not be safe to base conviction on corroborative or confirmatory evidence.”*

6. In case of *Shafqat Mehmood and others vs. The State (2011 SCMR 537)*, it has been held by the Hon’ble Apex Court that;

*“Delay of seven days in holding the identification parade after the arrest of accused had made the same doubtful”.*

7. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Apex court that;

*“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. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".*

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, consequently, they are acquitted of the offence for which they were charged, tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

9. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE