

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Criminal Appeal No. 714 of 2019**

Appellant: Kashif Khan through M/s Iftikhar Ahmed Shah and Umair Usman, advocates

The State: through Mr. Muhammad Anwar Mahar, DDPP for the State

Date of hearing: 19.09.2023

Date of judgment: 19.09.2023

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

**IRSHAD ALI SHAH, J-** It is the case of prosecution that the appellant, co-accused Sohail Ahmed @ Shani and Shayan @ Shani with rest of the culprits during course of dacoity not only committed murder of Muhammad Iqbal by causing him fire shot injuries but also caused fire shot injuries to PW Muhammad Nadeem, the employees of Askari Security Company, for that the present case was registered. The appellant and above named co-accused denied the charge and the prosecution to prove the same, examined in all 10 witnesses and then closed its side. The appellant and above named co-accused during course of their examination under Section 342 Cr.PC denied the prosecution's allegation by pleading their innocence; they did not examine themselves on oath, however, they examined Mst. Alya Kashif and Noshaba Sohail in their defence to prove their innocence with a plea that they were taken by the police much before their actual involvement in present case and through them they also produced certain documents. On conclusion of trial, above named co-accused were acquitted while the appellant was convicted under Section 302(b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs.100,000/- to the legal heirs of the deceased and in default whereof to

undergo simple imprisonment for 01 year with benefit of Section 382 (b) Cr.P.C by learned VIIth-Additional Sessions Judge/MCTC-2, Karachi, Central vide judgment dated 24.10.2019, which the appellant has impugned before this Court by preferring the instant Cr. Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case by the police falsely in a blind FIR, on the basis of defective identification parade and on the basis of same evidence co-accused Sohail @ Shani and Shayan @ Shani have already been acquitted by the learned trial Court, therefore, the appellant is also entitled to his acquittal by extending them benefit of doubt, which is opposed by learned DDPP for the State by contending that the case of the appellant is distinguishable to that of the acquitted accused and on arrest from him has been secured the pistol which he allegedly used in commission of the incident.

3. Heard arguments and perused the record.

4. It is stated by complainant Muhammad Farhan that on 27.07.2018, he, Muhammad Nadeem and Muhammad Iqbal were directed by their security company to collect the cash from distribution service limited situated at North Karachi; Muhammad Iqbal went inside of the company for taking cash and when came out, suddenly there came 4/5 culprits who snatched the cash from him by resorting to firing whereby Muhammad Iqbal and Muhammad Nadeem sustained fire shot injuries; Muhammad Iqbal died on his way to Abbasi Shaheed Hospital while Muhammad Nadeem was admitted in Hospital for treatment of his injuries. He then lodged report of the incident; it was recorded by I.O/SIP Maqsood Hussain. It is lodged with delay of about 06 hours and it is against unknown

culprits. It was further stated by the complainant that after 10/15 days to the incident he was called by I.O/SIP Malik Muhammad Afzal at PS Bilal Colony and there was shown 03 culprits with muffled faces who were already arrested in some other case and were formally arrested in present case under memo, which was signed by him and co-mashir ASI Younis Aziz. It was further stated by him that the appellant and above named co-accused were identified by him with specific role during course of their identification parade, which was conducted by Mr. Asghar Ali Soomro, the Magistrate, having jurisdiction. As per memo of arrest, the appellant and above named co-accused were arrested formally in present case on 13.08.2018 by I.O/SIP Malik Muhammad Afzal on their identification by the complainant at the police station. In such situation, the arranging for identification parade through Magistrate on 20.08.2018 with delay of about 07 days was mockery of procedure. If there was any need for identification parade of the appellant and above named co-accused then it was to have been conducted through PW Muhammad Nadeem being injured witness to the incident which the prosecution has failed to conduct for no obvious reason; such omission on its part could not be overlooked. PW Raheel Umar on account of his failure to identify the appellant and above named co-accused was declared hostile to the prosecution. His evidence could not be lost sight of. PW Muhammad Nadeem was not able to identify the culprits involving the incident excepting the appellant. The identity of the appellant by PW Muhammad Nadeem at trial does not satisfy the requirement of the law. ASI Younis Aziz who actually arrested the appellant and recovered from him the pistol allegedly used in commission of the incident has been given up by the prosecution. His non-examination could not be

overlooked. There is no forensic report with regard to the recovered pistol from the appellant. It was stated by I.O/SIP Malik Muhammad Afzal, the appellant and above named co-accused during course of interrogation admitted their guilt before him. If for the sake of arguments, it is believed to be so even then such admission on their part in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used as evidence. There is no recovery of robbed articles. By not awarding punishment to the appellant for committing robbery or causing fire shot injuries to PW Muhammad Nadeem he impliedly has been acquitted even by learned trial Court for such allegation. On the basis of same evidence, above named co-accused have already been acquitted by the learned trial Court and their acquittal has not been challenged by the prosecution. The appellant has pleaded innocence; such plea on his part could not be overlooked. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit he too is found entitled.

5. In case of *Sardar Bibi and others vs. Munir Ahmed and others* (2017 SCMR 344), it has been held by the Apex Court that;

*“When the eye-witnesses produced by the prosecution were disbelieved to the extent of one accused person attributed effective role, then the said eye-witnesses could not be relied upon for the purpose of convicting another accused person attributed a similar role without availability of independent corroboration to the extent of such other accused”.*

6. 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".*

7. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, consequently, he is acquitted of the offence for which he was 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.

8. The instant Criminal Appeal is disposed of accordingly.

**JUDGE**