

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
MIRPURKHAS**

**Criminal Appeal No. S-45 of 2024 (Old No.08 of 2023)  
&  
Criminal Appeal No. S-46 of 2024 (Old No.10 of 2023)**

Appellant Munawar@Munni in Cr. Appeal No.S-45/2024.	:	through Mr. Mian Taj Muhammad Keerio, Advocate
Appellants Hyder & Shah Nawaz: in Cr. Appeal No.S-45/2024.	:	through Mr. Ghulamullah Chang, Advocate
Appellant Dilber @ Allah Bachayo: in Cr. Appeal No. No. S-46/2024	:	through Mr. Abdul Hafeez Mari, Advocate.
State	:	through Mr. Dhani Bakhsh Mari, Assistant Prosecutor General, Sindh
Complainant Ahmed in both appeals	:	through Mr. OM Parkash & Mr. Afzal Karim Virk Advocates.
Date of hearing	:	06.06.2024
Date of Judgment	:	06.06.2024

**JUDGMENT**

**Muhammad Saleem Jessar, J.-** By means of this single judgment, I propose to dispose of captioned criminal appeals, as same have arisen out of one and same judgment passed by learned Addl. Sessions Judge-I/MCTC, Umarkot (trial Court).

2. Through these Criminal Appeals, appellants / accused Dilbar @ Allah Bachayo Mari, Munawar @ Munni Khaskheli, Hyder Lanjo and Shah Nawaz Lanjo have assailed judgment dated 05.01.2023 whereby the appellants were convicted for the offence under Section 394 PPC and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 50,000/- each and in

case of default they were ordered to suffer simple imprisonment for six months more. However, benefit of Section 382-B Cr. P.C. was extended to all the accused. By the same judgment, absconding accused namely Mithal@Dado Shar and Sadam Birohi were declared as proclaimed offender and the case against them was ordered to be kept on the dormant file till their arrest.

3. Brief facts of the prosecution case, as per FIR lodged by complainant Ahmed Saand, are that he and PWs Abdul Khalique Kalar and Qazi Muhammad Nooh Saand are employed at Kiryana Shop of Seth Ghulam Fareed Memon. On 03.12.2020 all employees and seth Ghulam Fareed Memon along with others was sitting at the shop, when at about 1620 hours, one 125 Motorcycle stopped in front of their shop, wherefrom three persons alighted and took out pistols. Out of them, two persons entered in the shop, while one person stood outside the shop. All the accused could be identified if seen again. The accused who entered into the shop, kept all the PWs hostage on the force of weapons and threat of murder. Then, they robbed Rs. 7000/- from complainant Ahmed, one Mobile phone from Qazi Muhammad Nooh, while another accused caused pistol butt blows at the head of Ghulam Fareed Memon and Abdul Khalique Kalar and robbed Rs. 800,000/- already counted by Seth Ghulam Fareed, so also robbed a Mobile Phone kept there by Haji Abdul Rehman Memon, father of seth Ghulam Fareed Memon. Meanwhile, watchman Muhammad Niaz Gishkori came there, who tried to catch the accused standing outside the shop, whereupon the accused who were inside the shop, walked out and made straight fire upon Muhammad Niaz Gishkori, who sustained fire arm injury and fell down. Then, all accused boarded on their 125 motorcycle and fled away towards *Gu'r Mandi* alongwith robbed property. Thereafter, the injured PWs were shifted to Kunri Hospital, where doctors referred injured Muhammad Niaz Gishkori to Hyderabad Hospital. After leaving injured Muhammad Niaz at Hyderabad Hospital, the complainant went to police station and lodged FIR, in above terms.

4. After registration of FIR, the case was investigated by Inspector Atif Hussain Shah, who visited place of incident, got prepared sketch of dacoits, secured 125 Motorcycle abandoned by the accused. Then upon receiving information of accused Dilbar Mari's involvement in the alleged offence through SSP Mirpurkhas, he went to Mirpurkhas and formally arrested accused Dilbar Mari, interrogated him who disclosed names of co-accused

Munawar @ Munni, Hyder Lanjo, Shah Nawaz Lanjo, Sadam Brohi and Mithal @ Dodo Shar. He then got conducted identification parade of the accused under the supervision of concerned Judicial Magistrate. The police got recovered part of robbed amount at the pointation of arrested accused Munwar @ Munni, so also got recovered a part of robbed amount and mobile phone on the pointation of accused Dilbar Mari. He interrogated arrested accused Hyder Lanjo and Shah Nawaz Lanjo and got recovered a part of robbed amount on their pointation, so also recovered a motorcycle on the pointation of accused Shah Nawaz Lanjo, collected call data reports of accused; besides, collected criminal record of accused Dilbar Mari and Munawar @ Munni Khaskheli. After completing investigation, submitted final challan before the concerned Court showing accused Dilbar @ Allah Bachayo Mari, Munawar @ Munni Khaskheli, Hyder Lanjo and Shah Nawaz Lanjo in judicial custody, while accused Sadam Hussain Birohi and Mithal @ Dado Shar as absconders.

5. The concerned Magistrate after completing legal formalities, supplied copies of case papers to accused vide receipt Ex.04. Thereafter, case was sent-up to the Court of Sessions Judge, Umerkot who assigned the same to the trial Court for disposal according to law.

6. A formal charge was framed against accused at Ex....05, to which they pleaded not guilty and claimed trial vide their pleas recorded at Ex...5-A to 05-D respectively.

7. The prosecution examined Dr. Abdul Khaliq at Ex....06, who produced police letter and medical certificates of injured PWs as Ex....06-A to 06-E respectively. PW-2 complainant Ahmed Saand was examined at Ex.....07, who produced FIR as Ex.....07-A and memo of identification parade as Ex....7-B. PW-3 injured Niaz Muhammad was examined at Ex....08. PW-04 Ghulam Fareed was examined at Ex....09, who produced memo of identification as Ex.....09-A. PW-05 Abdul Khaliq was examined at Ex.....10, who produced memo of identification parade as Ex...10-A. PW-6 Qazi Muhammad Nooh was examined at Ex...11, who produced memo of identification parade as Ex....11-A. PW-07 ASI Umed Ali was examined at Ex...12, who produced memo of injuries and three daily diary entries as Ex....12-A to 12-D respectively. PW-8 DSP Abdul Sattar was examined at

Ex.....13, who produced a daily diary entry as Ex.....13-A. PW-09 Inspector Tufail Ahmed was examined at Ex....14, while PW-10 mashir PC Aamir Farooque was examined at Ex.....15, who produced memo of arrest of accused Dilbar Mari, memo of arrest of accused Munawar @ Munni, memo of recovery on pointation of accused Dilbar @ Allah Bachayo and memo of recovery on pointation of accused Shah Nawaz @ Mullah as Ex....15-A to 15-D respectively. PW-11 mashir Ahmed Khan was examined at Ex..... 16, who produced memo of site inspection, memo of securing boxes of looted mobile phones, memo of recovery of motorcycle and memo of recovery on pointation of accused Hyder Lanjo as Ex.....16-A to 16-D respectively. PW-12 mashir PC Allah Bux was examined at Ex.....17, who produced memo of arrest of accused Shah Nawaz @ Mullan as EX.....17-A. PW-13 mashir PC Muhammad Hanif was examined at Ex....18, who produced memo of recovery on pointation of accused Munawar @ Munni as Ex.....18-A. PW-14, I.O. / Inspector Atif Hussain Shah was examined at Ex.....19, who produced letter addressed to CPLC, sketch of accused, letter addressed to Excise and Taxation Department, Mirpurkhas, Verification of Motorcycle, Information Note received from SSP Mirpurkhas, permission letter of SSP Umerkot, No Objection Certificate by Judicial Magistrate / Family Judge Mirpurkhas, Interrogation Report, letter of receiving custody of accused Dilbar Mari, Application addressed to Judicial Magistrate-II, Kunri for identification parade, Notice and Order of Judicial Magistrate-II, Kunri, Call Data Record, Criminal Record of accused Dilbar Mari as Ex.....19-A to 19-P and 13 daily diary entries of different dates as Ex.....19-Q to 19-DD respectively. PW-15 Mr.Allah Bachayo, the Judicial Magistrate Samaro, was examined at Ex.....20.

8. Learned Public Prosecutor then closed prosecution side through statement at Ex....21.

9. Statements of all accused under Section 342 Cr. P.C. were recorded at Ex...22 to Ex.....25 in which they denied the allegations of prosecution and claimed to be innocent. However, they did not examine themselves on oath, nor opted to lead any evidence in their defence.

10. After formulating the points for determination in the case, recording evidence of the prosecution witnesses and hearing counsel for the parties, learned trial Court convicted and sentenced the accused / appellants vide

impugned judgments, as stated above. Against said judgment, instant appeals have been preferred by the convicts / appellants.

11. I have heard learned counsel for the appellants, learned counsel for the complainant as well as learned Assistant P.G. appearing for the State and perused the material made available before me on the record with their able assistance.

12. Learned counsel for the appellants submitted that names of the appellants do not transpire in the FIR and though they were subjected to identification Parade, yet no specific role was assigned to them by PW / victim Ghulam Fareed (Page No.89 Ex,9 of paper book). They further submitted that appellant Munawar @ Munni was arrested by the police on 24.12.2020, Hyder was arrested by the police on 26.12.2020, Shahnawaz was arrested on 18.01.2021 whereas the appellant Dilber @ Allah Bachayo was arrested by the police of PS Old Mirpur in connection with Crime Nos.87, 88 and 90 of 2020; however, he was shown to have been arrested in this case on 21.12.2020. It is their contention that it was the accused Dilber @ Allah Bachayo, who disclosed names of other accused and on his pointation remaining appellants were arrested. They further submitted that despite such fact, the appellants were subjected to Identification Parade on 26.12.2020 i.e. much later after their arrest, hence no sanctity could be attached to the identification Parade, more particularly when PW who allegedly picked up the accused in the Identification Parade had not assigned any specific role to any of the accused in the commission of alleged offence. They further submitted that though some of robbed amount is shown to have been recovered from their possession on 25.12.2020, but that too is delayed by about 04 days of their respective arrest and according to their contention, it was foisted upon them by the police in collusion with the complainant only in order to strengthen the rope of their false case. Learned counsel drew attention of the court towards evidence of PW Ahmed (page No.59 Exh.7 relevant page No.63) where in his cross-examination he had admitted that accused Shahnawaz and Hyder were not present at the time of incident and their names were disclosed to them by the police. As far as alleged motorcycle is concerned, learned counsel while referring to evidence of Inspector / I.O. Atif Hussain (Ex.19 page No.136 at relevant page No.137), submitted that it was recovered on 05.12.2020 from the land of one Yahya Qadiani and said

Yahya Qadiani was not examined by the I.O. during investigation. Learned counsel further submitted that since Identification Parade was defective, hence it created doubt to the veracity of prosecution evidence which goes in favour of the appellants. In support of their contentions, they relied upon the case law viz: Sabir Ali alias Fauji Vs. The State (2011 SCMR 563 |Supreme Court of Pakistan]). They further referred to evidence of PW Ghulam Fareed (page No.89 Exh9 at relevant page No.91), whereby he had admitted in his cross examination that on 21.12.2020 accused Dilber was brought at PS Kunri from Mirpurkhas Jail where the witnesses alongwith complainant and PW Abdul Khalique went to see the accused at PS Kunri before holding of Identification parade. Mr. Mian Taj Muhammad, advocate for appellant Munawar @ Munni, submitted that the said appellant was arrested on 25.12.2020, despite that he was not subjected to Identification Parade and mere recovery of Rs.9,000/- is no ground to convict him, more particularly when in the FIR nothing had been mentioned as to which of the accused had robbed amount from the victim and even at the time of Identification Parade, it was not pointed out that who allegedly robbed the amount from the victim, hence no specific role was assigned to him as well as to co-accused.

13. Learned counsel, therefore, submitted that in the light of above discrepancies and flaws in the prosecution case, the veracity of the prosecution evidence does not come to the required level in order to maintain the conviction against the appellants, hence they prayed for allowing the appeals and acquittal of the appellants.

14. Learned Assistant P.G. appearing on behalf of the State vehemently opposed grant of appeals on the ground that appellants were rightly picked out by the PWs during Identification Parade, besides robbed amount was also recovered from their possession. He further submitted that no *malafide* or enmity has been alleged for their false implication, hence the prosecution evidence could not be discarded merely on the basis of certain discrepancies which are minor in nature. He, therefore, submitted that by dismissing the appeals, impugned judgment may be maintained.

15. Complainant as well as his counsel inspite of notice, have chosen to remain absent; however, Mr. Om Parkash advocate holding brief for Mr. Afzal Karim, advocate for the complainant, opposed the appeals and submitted that

prosecution had adduced sufficient material evidence connecting the appellants with the commission of alleged crime, hence appeals merit no consideration, therefore, same may be dismissed.

16. From perusal of the evidence adduced by the prosecution witnesses, it seems that they have made certain glaring and material admissions. Complainant Ahmed Ali in his cross-examination has admitted that though it is mentioned in the FIR that accused had made straight firing but it is not mentioned as to who and how many fires were made. He had further admitted that accused Dilbar was not known to him before registration of the case. He further admitted that though the CCTV cameras were installed at their shop; however, due to power shortage, no video was recorded. He further went on to say that though the place of incident (shop) was surrounded by many houses as well as shops yet none from the surrounding was arrayed as a witness even he did not produce blood stained clothes of the injured. He had also admitted that one accused Soomar Chachar was arrested but later was released by the police being suspicious. PW Niaz Muhammad, who was serving as watchman at the shop of Seth Ghulam Fareed Memon, had deposed in his examination-in-chief that on 03.12.2020 he came to Kunri town for his personal work, meanwhile found three accused in the shop of Seth Ghulam Farred, who after committing robbery, rushed out. Upon resistance, one of the accused caused fire arm shots on him which inflicted on his chest, after which, he fell down. He further admitted that he was not examined by the police. He; however, had identified the accused Dilbar before the trial Court; however, he could not identify the remaining accused. In his cross, he admitted that before the incident, accused Dilbar was not known to him and his name was disclosed to him by Seth Ghulam Fareed. He also admitted in his cross that he inflicted Lathi blows to accused Dilbar Mari; however, same Lathi was not secured by the police nor he produced as case property, in contravention of his evidence. PW Ghulam Fareed had admitted in his examination-in-chief that as soon as the accused came out, their watchman Niaz Ahmed Gishkori offered resistance wherefrom one of accused caused him fire arm injury. In his cross-examination, PW Ghulam Fareed deposed that names of accused were disclosed to him by the police. He further admitted in his cross that on 16.12.2020 he along with complainant went to District Mirpurkhas and when they reached at PS, accused Dilbar was found in the lock up of PS Mirpurkhas. On 21.12.2020, accused Dilbar Mari was

brought to PS Kunri from Mirpurkhas jail, at that time he along with complainant and PW Abdu Abdul Khalique went to see accused Dilbar at PS Kunri before conduct of the identification parade.

17. PW Abdul Khalique deposed in his examination-in-chief that as soon as accused came out, their watchman Niaz Ahmed Gishkori offered resistance, whereupon accused caused him fire arm injury. In his cross-examination, he deposed that police did not record his statement under Section 161 Cr.P.C. He further admitted that he is the employee of Seth Ghulam Nabi Memon. After incident 15/20 persons gathered at the spot and name of accused Dilbar was disclosed to him by the police. PW Qazi Muhammad Nooh had deposed in his examination-in-chief almost same facts as are deposed by PWs Seth Ghulam Fareed and Abdul Khalique. He further admitted in his cross-examination that accused Dilbar was not known to him before the incident/FIR; besides, police disclosed name of accused Dilbar. He further admitted that in his cross that shop of the complainant is situated in Main Bazar where so many shops are situated. In the surrounding of shop of the complainant, about hundred persons gathered at the time of incident and he did not go at PS of District Mirpurkhas. PW Umed Ali admitted in his cross-examination that he had not produced entry dated 03.12.2020 through which it could be deduced that he was on duty on particular date at PS Kunri as duty officer even did not know the number of said entry, as mentioned under letter vide Ex.6/A. PW Tufail Ahmed admitted in his cross-examination that he did not produce daily diary entry dated 23.01.2021 nor he verified the ownership of alleged motorcycle from Excise Department even he had not produced such entry showing his departure from PS to Civil Hospital for collecting final medical certificate. PW Aamir Farooque deposed in his examination-in-chief that accused voluntarily produced Rs.3000/- kept in Iron trunk, so also handed over one CD-70 model 2019 of red colour to police. Said motorcycle was recovered on the pointation of accused Shahnawaz and was also made available outside the Court room at the time of evidence. In his cross-examination, he deposed that I.O did not record the statement of WPC Muhammad Ramzan even memo of arrest viz. Ex.15/B did not show any daily diary entry to the effect wherefrom accused was arrested in instant case. At the time of arrest of accused Shahnawaz from village, Inspector Atif Hussain Shah did not call any private person to witness the proceedings. He also did not produce the entry of P.S Kunri which may show that he was at PS Kunri or not. The plastic shopper available before the



Court was not in sealed condition. PW/Mashir Ahmed Khan admitted in his cross-examination that he became Mashir of the proceedings at the request of Seth Ghulam Fareed Memon. The complainant asked him to become Mashir of recovery vide Ex.16/C. He also admitted that memo of entries already available vide Ex.12/A but he never went to Kunri Hospital, again admitted that police obtained his signature over the memo of injuries at police station.

18. PW/Inspector/I.O Atif Hussain admitted in his cross-examination that contents of the memo (Ex.18/A) show that the cash amount recovered on the pointation of accused Munawar @ Munni were kept by him in a plastic shopper but the colour of said shopper is not mentioned in the memo and said plastic shopper was not available before the Court. He while referring memo dated 05.12.2020 (Ex.16/C) deposed that motorcycle in question was recovered from the land of one Yahya Qadiyani; however, said Yahya Qadiyani was not made as witness in instant case nor he has been arrayed as an accused in this crime. He further admitted that he had not recorded the statement of owner of the motorcycle. He further admitted that PWs did not disclose name of accused Munawar @ Munni in their statements under Section 161 Cr.P.C; however, at belated stage they were examined under Section 162 Cr.P.C whereby they disclosed name of accused Munawar @ Munni. Accused Munawar @ Munni was not subjected to identification test, though he made entry into Roznamcha/daily diary; however, he did not produce such copy before the Court. He was confronted with memo of arrest of accused Dilbar as Ex.15/A which did not show any entry regarding his arrest from the District Jail Mirpurkhas; however, letter for permission from the concerned Civil Judge was mentioned along with order. He produced accused Dilbar before PS Kunri and said entry was also not produced before the Court.

19. The above-quoted admissions lead to some discrepancies / lacunas in the prosecution case / investigation as well as contradictions in the evidence of prosecution witnesses which may be narrated in the following terms:

20. The identification parade suffers from certain material illegalities and irregularities, inasmuch as; the witnesses who had picked out accused Dilber in the identification parade had already seen him in the police lock-up; no features of the accused was given, as well as no specific role was assigned to each accused in the commission of alleged offence by the witnesses who

allegedly picked out the accused in the identification parade, so also there was delay in holding of identification parade. Besides, accused Munwaar alias Munni, although admittedly not being known to the witnesses prior to the incident, was not put to identification test at all. All these lapses put serious dents in the identification parade, thus it cannot be said to have any sanctity in the eye of law.

21. In this connection, reference may be made to a recent judgment pronounced by a Full Bench of Honourable Supreme Court in the case of *MEHBOOB HASSAN Vs. AKHTAR ISLAM and others*, reported in 2024 SCMR 757, wherein it was held as under:

*“Moreover, in order "to maintain secrecy, it was the responsibility of the concerned police to ensure that the accused should not witness by the witnesses while in police station lock-up or in police custody. The police was required to have taken every precaution to conceal the identity of the detainees before conducting the identification parade. All these precautions should not only be taken, but must have been proved to have been taken. There is nothing on the record to prove that any step was taken by the police in this behalf. Before conducting the identification parade, the respondents had raised an objection before the Magistrate that the witnesses saw them in the lockup and their photographs were published in the newspapers in connection with some other case. The prosecution did not deny the objection. The Magistrate was required to record the objection and to decide its fate, but he ignored the objection and instead, continued to complete the process of identification parade... .. the presumption would be that they were picked from amongst the other persons during that identification, because the witnesses had access to the police station and saw the respondents in the police lock-up and might have saw their pictures published in the newspapers before the identification parade. Evidence of such witnesses, identifying the respondents as accused, loses its efficacy.”*

22. In another case reported as *SABIR ALI alias FAUJI Vs. The State* (SCMR 2011 563), while discussing the said point, it was held as under:

*“It is settled principle of law that it is the duty and obligation of the authority that precautionary measures are necessary to conceal the identity of the accused from one place to another which is paramount duty of the police to ensure that the accused should not be seen by the witnesses before the identification parade. It is pertinent to mention that all these precautions should not only be taken but should be proved to have been taken and these precautions should be recorded in the initial record like general diary of the police station and the daily register and the same should be produced in court. In the absence of such precaution and evidence, no value can be attached to the identification of the accused by witnesses. This aspect of the case was*

*not considered by both the courts below as law laid down by this Court in Munir Ahmed's case (1998 SCMR 752). The aforesaid pieces of evidence clearly envisage that witnesses had opportunity to see the appellant and his co-accused, therefore, identification parade which was held in this case was not in accordance with that rules.*

23. In the case of *MEHBOOB HASSAN* (supra) while dealing with the point that the witnesses, who allegedly picked out the accused in the identification parade, had not given any features of the accused and no specific role was attributed to each of the accused, it was held as under :

*"It is noteworthy that the persons who abducted the abductee and those who received the ransom amount were not known to the witnesses prior to the identification parade. It was, therefore, necessary for the witnesses to have had given some features of each of the respondents, with their specific role, during the investigation, before the identification parade, enabling the Magistrate to manage the person of identical features for the purpose of including them in identification parade as dummies. It is an admitted fact that the witnesses did not disclose any such fact in respect of the respondents... The respondents are mainly picked up in the identification parade, and the role attributed to them is not stated by the witnesses, the identification parade in the circumstances was not in line with Article 22 of the Qanun-e-Shahadat Order, 1984, hence, is of no evidentiary value and cannot be relied upon."*

24. Likewise, in the case of *SABIR ALI alias FAUJI* (supra) it was held as under:

*"It is also settled principle of law that role of the accused was not described by the witnesses at the time of identification parade which is always considered inherent defect, therefore, such identification parade lost its value and cannot be relied upon. See Ghulam Rasul's case (1988 SCMR 557), Mahmood Ahmed's case (1995 SCMR 127) and Khadim Hussain's case (1985 SCMR 721). As mentioned above the aforesaid witnesses did not mention name and role of the accused in their statements recorded by the Magistrate after identification parade. It is an admitted fact that appellant and his co-accused had taken objection at the time of identification parade that they had already been shown to the witnesses but this objection was not taken into consideration by the courts below. This plea was also taken in reply of question No. 6 by the appellant. In such circumstances identification parade becomes doubtful and cannot be relied upon. See Sohn's case (PLJ 1974 Cr. Cases 208). It is also settled principle of law that when witnesses giving no description of the accused previous to identification, such type of identification cannot be reliable. See Maula Dad's case (AIR 1925 Lah. 426). It is an admitted fact that in terms of contents of witnesses did not know the appellant and his co-accused before the occurrence. Identification parade was not held in accordance with law therefore, identification in court by the witnesses is also of no value in terms of law laid down in Sultan's case (PLD*

1976 B.J. 10). It is also settled principle that identification test is of no value when description/feature of accused is not given in the contents of the F.I.R. It appears from the record that accused persons are complete strangers to the prosecution witnesses, therefore, in the absence of description in the contents of F.I.R., the benefit of doubt be given to the accused persons coupled with the fact that according to the prosecution witnesses they had opportunity to see them on the day of incident in moonlight. Identification parade was held after about six months from the date of occurrence and also conducted after a delay of 9 days after the arrest of the accused. This delay per se in both counts create lot of doubt regarding the identification parade as the witnesses had various opportunities to see the accused."

In the same case it was also held as under:

*"It is also settled principle of law that identification parade of each accused should be held separately otherwise confusion would be created and in the case in hand identification parade of all the three accused was held jointly. This aspect of the case was, not considered by both the courts below in terms of law laid down by this Court in Pasand's case (PLD 1981 SC 142) wherein the conviction was set aside on this ground alone. It is also settled principle of law that picking out of accused in identification parade is not a substantive piece of evidence. Such evidence is merely corroborative piece of evidence. It is pertinent to mention here that contents of the F.I.R. reveal that witnesses would be able to identify the accused after seeing them. In such situation identification parade becomes essential which is to be conducted strictly in accordance with law after completing legal requirements keeping In view the principles laid down by this Court in various pronouncements. See Farman Hussain's case (PLD 1995 SC 1), Ismail's case (1974 SCMR 175). It is also settled principle of law that if accused were not named in the F.I.R. identification parade becomes necessary. See Farman Ali's case (1997 SCMR 971).*

25. It is also an admitted position that no identification parade was held in respect of accused Munwar alias Munni although admittedly he was also not previously known to the complainant and other alleged eye-witnesses of the incident. It is now well settled that in case it is disclosed in the F.I.R. that the accused were not known to the alleged eye-witnesses, then it is incumbent upon the I.O. to get the arrested accused identified through said eye-witnesses in a proper identification parade. In the case of Sabir (supra) it was held, *"It is pertinent to mention here that contents of the F.I.R. reveal that witnesses would be able to identify the accused after seeing them. In such situation identification parade becomes essential which is to be conducted strictly in accordance with law after completing legal requirements keeping In view the principles laid down by this Court in various pronouncements. See Farman Hussain's case (PLD 1995 SC 1), Ismail's case (1974 SCMR 175). It is also*

*settled principle of law that if accused were not named in the F.I.R. identification parade becomes necessary. See Farman Ali's case (1997 SCMR 971)."*

In the said case it was also held as under:

*"It is also settled principle of law that identification parade of each accused should be held separately otherwise confusion would be created and in the case in hand identification parade of all the three accused was held jointly. This aspect of the case was, not considered by both the courts below in terms of law laid down by this Court in Pasand's case (PLD 1981 SC 142) wherein the conviction was set aside on this ground alone. It is also settled principle of law that picking out of accused in identification parade is not a substantive piece of evidence. Such evidence is merely corroborative piece of evidence."*

26. Investigating Officer P.W. Atif as well as other police officials in their respective evidence have admitted that relevant roznamcha entries / daily diaries were not produced before the trial Court during course of evidence. It is a settled principle of law that the Superior Courts have not appreciated such conduct on the part of the police/prosecution for non-production of roznamcha entry and have held that such lapse also puts dent in the prosecution case. In the case of *Muhammad Akram Vs. State* reported in YLR 2020 Note 94 (Sindh High Court) Investigating Officer admitted in his cross-examination that he had not produced roznamcha entry before the court, likewise, witness who registered the FIR also admitted in his evidence that he had not produced roznamcha entry in the court, therefore, it was held that in absence of any roznamcha entry, it becomes suspicious as to whether, Investigating Officer or police party, as the case may be, had in fact left the police station to the place of arrest, incident and/or recovery or not. Such facts were fatal to the prosecution case.

27. In the F.I.R. as well as in his evidence the complainant, so also three alleged eye-witnesses in their respective evidence have categorically stated that in all **three** accused had committed the alleged offence; however, in their supplementary statements recorded subsequently under section 162 Cr. P.C. they have also involved accused Munwar and others. The Investigating Officer namely, P.W. Atif in his cross-examination categorically admitted, **"It is fact during course of investigation the PWs did not disclose the name of accused Munawar @ Munnai in their statement u/s 161 Cr.P.C, however, at later stage, their statements were recorded u/s 162 Cr.P.C. in which they**

**disclosed the name of accused Munawar@Munni. It is fact I have not produced statements u/s 162 Cr.P.C. before the court.**

28. As admitted by the I.O., the supplementary statements were not produced by him before the trial Court, nor has he deposed as to on what date such statements were recorded, thus no legal sanctity could be attached to such supplementary statements.

29. In this connection, reference may be made to the case of *FAISAL AHMAD Vs. The State*, reported in 2018 YLR 1269 [Lahore], where it was held as under:

*"It is noticed that the petitioner is not named in FIR. He has been involved in this case through supplementary statement dated 30.11.2016 after about four days of the occurrence wherein no source of his information has been mentioned as to how he came to know about the involvement of the petitioner. Such supplementary statement has got no value in the eyes of law. Reliance is placed on case law titled as "Falak Sher alias Sheru v. The State" 1995 SCMR 1350 and "Abid Ali alias Ali v. The State" 2011 SCMR 161."*

30. There also appears violation of the provisions of Section 103 Cr. P.C. Complainant in his cross-examination had admitted, "It is fact houses and shops are situated in surrounding of place of incident."

31. P.W. Aamir Farooqui, mashir, admitted "I cannot estimate the total number of houses in village of accused Shah Nawaz Lanjo where memo Ex. 15-D was prepared....It is fact when we left P.S. Kunri along with accused Shah Nawaz, the Inspector Atif Hussain Shah did not call any private person to act as mashir."

32. Needless to emphasize that in view of provisions of Section 103 Cr. P.C. the officials making searches, recoveries and arrests, are reasonably required to associate private persons, more particularly in those cases in which presence of private persons is admitted, so as to lend credence to such actions, and to restore public confidence. This aspect of the matter must not be lost sight of indiscriminately and without exception. Only cursory efforts are not enough merely in order to fulfill casual formality, rather serious and genuine attempts should be made to associate private mashirs of the locality. In this connection, reference may be made to cases reported as *State Vs. Bashir and others* (PLD 1997 S.C. 408), *Sarmad Ali Vs. The State* (2019 MLD 670), *Yameen Kumhar Vs. The State* (PLD 1990 Karachi 275).

33. As admitted by the I.O, PWs Abdul Khaliq, Qazi Muhammad Nooh and Niaz that blood stained clothes of the injured were not secured nor were produced by the I.O before the trial Court. Injured PW Niaz had also admitted in his examination-in-chief that police did not record his statement. It is settled law that non-recording of statement of the witness particularly who is injured one/victim and is a star witness of the prosecution for a considerable time, shatters the entire prosecution version.

34. Such lapse on the part of Investigating Officer also puts dent in the prosecution case. In the case of **Mst. MIR ZALAI Vs. GHAZI KHAN and others**, reported in **2020 SCMR 319**, Honourable Supreme Court held as under:

*“Both the eye-witnesses produced by the prosecution had claimed that while handling Afsar Khan deceased their clothes had been smeared with the blood of the deceased but admittedly no such blood-stained clothes of the said eye-witnesses had been secured or produced. In these circumstances the High Court had concluded that the eye-witnesses produced by the prosecution were not reliable and in all likelihood they had not witnessed the murder in issue. In the above mentioned peculiar circumstances of this case we have not been able to take any legitimate exception to the said conclusion reached by the High Court.”*

35. In this connection, reference may be made to the case of **YASIR PARVEZ and others Vs. The State and others**, reported in **2023 YLR 2164 [Lahore]**, wherein a Division Bench of Lahore High Court held as under:

*“Non-recording of statement of injured for about ten long days simply shattered the whole prosecution story given in Ex.PU particularly where it has not been plausibly explained at trial that what refrained the Investigator from recording statement of injured. All these facts clearly suggest that FIR in the instant case was lodged after due deliberation and consultation between complainant and police without recording statement of injured who received fire shot on his abdomen and he was in his senses when he was firstly medically examined at THQ Hospital, Bhalwal. Legitimate and irresistible conclusion that may conveniently be drawn from the above discussed facts is that the occurrence in consequence of which Hashmat Ali received fire shot injury and then lost his life, did not take place in the mode and manner as stated by the witnesses of ocular account who even otherwise are not only chance witnesses but also interested witnesses. It is established principle of criminal jurisprudence that conviction can only be based on evidence of unimpeachable character leading to certainty of the guilt of the accused and even a single doubt arising in the prosecution case must be resolved in favour of the accused whereas instant case from its inception to end remained replete with doubts.”*

36. It is also significant to point out that no proper investigation was conducted by the I.O. in respect of the motorcycle which was allegedly used by the accused in the commission of alleged offence.

37. Inspector / I.O. Atif Hussain deposed that the said motorcycle was recovered on 05.12.2020 from the land of one Yahya Qadiani; however, said Yahya Qadiani was not examined by him during investigation. He further admitted, **“It is fact I also did not record statement of owner of said motorcycle.”** It is evident that the said motorcycle was allegedly used in the commission of the alleged offence and the accused also fled away on the same motorcycle after committing the offence. In such circumstances, it was obligatory for the I.O. to have recorded the statement of the owner of said motorcycle but the owner has neither been arrayed as an accused, nor has been cited as a witness in the case. Not only this, even the above said Yaya Qadiani from whose land said motorcycle was secured by the police, was not examined by the I.O. Furthermore, it is pertinent to mention that per prosecution case and as per FIR, culprits were on one 125 motorcycle. Moreover, per memo of recovery, one CD-70 has been recovered, which shows malafide on the part of police. This is also injurious to the prosecution case.

38. It is well settled principle of law that the prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In instant case prosecution does not seem to have proved the allegations against the accused/appellants by producing unimpeachable evidence, thus doubts have been created in the prosecution version. In the case reported as Wazir Mohammad Vs. The State (1992 SCMR 1134) it was held by Honourable Supreme Court as under:

*“In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution.”*

39. In another case reported as Shamoona alias Shamma Vs. The State (1995 SCMR 1377) it was held by Honourable Supreme Court as under:

*“The prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused in his defence. Failure of prosecution to prove the case against the accused, entitles the accused to an acquittal.”*



40. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right and not as a grace or concession. In the present case, there are various admissions in the evidence of the prosecution witnesses which create doubts and put dents in the prosecution case. Even an accused cannot be deprived of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In the case reported as Tariq Pervaiz vs. The State 1995 SCMR 1345 the Honourable Supreme Court held as under :-

*"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."*

41. For the forgoing reasons, by a short order dated 06.6.2024 these Criminal Appeals were allowed. Consequently, the impugned judgment dated 05.01.2023 penned down by learned Additional Sessions Judge-I/ MCTC, Umerkot (Trial Court) vide S.C No.221/2021 Re-The State Vs. Dilbar @ Allah Bachayo and others" arising out of Cr.No.252/2020 of PS Kunri for offence U/S 394, 397 r/w section 34 PPC was set-aside, with the result, appellants Munawar @ Munni S/o Ali Muhammad Khaskheli, Hyder S/o Burhan Lanjo, Shah Nawaz S/o Fateh Khan Lanjo and Dilber @ Allah Bachayo S/o Abdul Majeed were acquitted of all the charges by extending benefit of doubt to them. The appellants were in custody; therefore, they were ordered to be released forthwith if their custody was no longer required by the jail authorities in any custody case. It was also ordered that copy of this order be kept in connected Crl. Appeal No.S-46 of 2024. These are the reasons for my short order.

Office to place a copy of this judgment in the connected appeal.

**JUDGE**

Mirpurkhas,  
Approved for Reporting