

## **IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Mohammad Karim Khan Agha***

***Mr. Justice Amjad Ali Bohio***

### **Spl. Criminal A .T. Appeal No.37 of 2022**

Appellant : Syed Abu Buturab Ali son of Syed Murtaza Kamal Shah through Mr.Muhammad Farooq, Advocate.

Respondent : The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.

### **Spl. Criminal A .T. Appeal No.43 of 2022**

Appellant : Faisal Mehmood son of Muhammad Ibrhaim through Mr. Mamoon A.K. Shirwany, Advocate.

Respondent : The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.

Date of Hearing : 11.10.2023

Date of Judgment : 16.10.2023

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

**AMJAD ALI BOHIO, J:-**The appellants, Syed Abu Buturab Ali, son of Syed Murtaza Kamal Shah, and Faisal Mehmood, son of Muhammad Ibrahim, have filed these appeals against the judgment passed by Anti-Terrorism Court No. X, Karachi, dated 29.01.2022 in Special Case No. A-153/2014, arising from Crime 142/2014 under Section 302/324 and 34 of the Pakistan Penal Code, read with Section 7 of the Anti-Terrorism Act, 1997. The case was registered at P.S. Gulshan-e-Iqbal, Karachi.

In the aforementioned judgment, the appellants were convicted and sentenced as follows:

- i. The accused Syed Abu Turab Ali [Syed Buturab Ali] son of Syed Murtaza Kamal and Faisal Mehmood s/o Muhammad Ibrahim are “Convicted” U/s 7(I)(a) of ATA, 1997 R/w S. 302 PPC for murdering deceased Hassan S/o Umar Farooq and they are sentenced to undergo “Life Imprisonment” (each of the accused) with fine of

Rs.400,000/- (each of the accused) and in default in payment of such Fine, they shall undergo further S.I. for a period of "01" Year.

- ii. The accused Syed Abu Turab Ali [Syed Buturab Ali] son of Syed Murtaza Kamal and Faisal Mehmood s/o Muhammad Ibrahim are also "Convicted" U/s 7(I)(c) of ATA, 1997 R/w S. 324 PPC for injuring the Complainant Muhammad Saad S/o Nasir Muneer and they are sentenced to undergo R.I. for a period of "10" years (each of the accused) with Fine of Rs.300,000/- (each) and in default in payment of such Fine, they shall undergo further S.I. for a period of "08" Months.

2. According to the prosecution's case as alleged in the FIR, the incident occurred on 01.04.2014 when complainant Sa'ad, accompanied by his cousin Hassan, was returning home from Jamia Madarssah Ahsan-ul-Uloom in their car with registration No. ANA-894. The car was driven by Hassan son of Umar Farooq. When they reached near Princess House, Block-5, Gulshan-e-Iqbal, Karachi approximately at 1345 hours, two unknown culprits on a 125cc motorcycle, wearing pants, chased them and fired upon the complainant and Hassan. As a result, Hassan sustained firearm injuries on different parts of his body and the complainant also received firearm injuries on his right shoulder and right forearm. Following the attack, the culprits quickly fled away from the scene. A Chippa Ambulance arrived at the spot and both injured were shifted to Patel Hospital. Unfortunately, the doctors at Patel Hospital confirmed Hassan's death. Medical treatment was provided to the complainant, and his statement under Section 154 Cr. P.C. was recorded on 02.04.2014.

3. Following the registration of the FIR and the completion of the usual investigation, the Investigating Officer submitted report under Section 173 Cr.P. against the accused/appellants. Subsequently, a formal charge was framed against both accused persons, to which, they pleaded not guilty and opted for trial.

4. The prosecution in order to prove its case examined SIP Abdul Haleem Bullo (PW-01), HC Naseer Ahmed (PW-02), ASI Rao Muhammad Aslam (PW-03), ASI Ali Gohar (PW-04), HC Abid Hussain (PW-05), Inspector Muhammad Aslam (PW-06), SIP Muhammad Aslam Khan (PW-07), Inspector Tariq Ali (PW-08), Liaquat Ali Khan (PW-09), Asif Majeed (PW-10), Judicial Magistrate Abdul Qadeer Buriro (PW-11), complainant Sa'ad (PW-12), Inspector Mir Aslam Khan (PW-13) and

Additional Police Surgeon Dr. Sheeraz Ali (PW-14). Subsequently, the prosecution closed the side of evidence vide statement dated 12.08.2021.

5. The statements of the appellants were recorded under Section 342 of the Criminal Procedure Code, wherein they denied the allegations made against them by the prosecution. Neither, the appellants gave statements on oath as provided under Section 340(2) of the Cr.P.C. nor, they called any witness in their defense.

6. After hearing the arguments from both parties and evaluating the evidence on record, the trial court found the appellants guilty and sentenced them as mentioned in paragraph No.1 of this judgment. As a result, the appellants have filed these appeals challenging their conviction and sentence.

7. The details of the case and the evidence produced before the trial court are extensively outlined in the challenged judgment dated 29.01.2022. Therefore, it is unnecessary to reproduce the same here to prevent duplication and repetition.

8. Learned counsel for the appellants has raised several pleas in their defense. They contend that the appellants are innocent and have been falsely implicated by the police. The counsel argued that there was a significant delay of thirty three (33) hours in lodging the FIR without any satisfactory explanation. Additionally, the complainant did not provide detailed physical or facial descriptions of the accused in his statements recorded under Section 154 and 161 of the Criminal Procedure Code. The prosecution brought a witness, Liaquat Ali Khan, during the investigation, whose name did not appear in the FIR. The identification parade was conducted jointly through PW Liaquat Ali Khan, who had not described the features and physiques of any of the unknown accused in his statement under Section 161 Cr.P.C. Furthermore, the complainant, Sa'ad, who was injured during the alleged incident, was not served with notice u/s 160 Cr.P.C before the identification parade of the appellants. The appellants were allegedly shown to Sa'ad before recording his evidence in court, which, according to the appellants' counsel, compromised the authenticity of Sa'ad's identification of the appellants in court, especially considering the seven-year gap since the incident. The counsel also argued that the admissions made by the accused after their arrest before police officials, without recording their confession under Section 164 Cr. P.C., have no evidentiary value. They claim that the Magistrate did not

follow proper procedures during the identification parade. The counsel also pointed out material contradictions in between the evidence of the prosecution witnesses, which, were not duly considered by the trial court. Based on these arguments, they urge to set aside the impugned judgment, by extending the benefit of doubt to the appellants. In support of their contentions, the appellants' counsel have referred the case law of *Abid Ali and 2 others v. The State* (2011 SCMR 208), *Muhammad Irshad v. Allah Ditta and others* (2017 SCMR 142), *Khalid Javed and another v. The State* (2003 SCMR 1419), *Muhammad Ayaz and others v. The State* (2011 SCMR 769), *Javed Khan alias BACHA and another v. The State and another* (2017 SCMR 524), *Mian Sohail Ahmed and others v. The State and others* (2019 SCMR 956), *Noor Islam v. Ghaniur Rehman and another* (2020 SCMR 310), *Sabir Ali alias Fauji v. The State* (2011 SCMR 563), *Faheem Ahmed Farooqui v. The State* (2008 SCMR 1572), *Azhar Mehmood and others v. The State* (2017 SCMR 135), *Kamal Din alias Kamala v. The State* (2018 SCMR 577), *Lal Pasand v. The State* (PLD 1981 SC 142), *Nazir Ahmad v. Muhammad Iqbal and another* (2011 SCMR 527), *Shafqat Mehmood and others v. The State* (2011 SCMR 537), *Muhammad Pervez and others v. The State and others* (2007 SCMR 670), *Amin Ali and another v. The State* (2011 SCMR 323), *Mansoor Khan v. The State* (2023 YLR 1305), *Sardar Bibi and another v. Munir Ahmed and others* (2017 SCMR 344), *Umar Hayat and another v. Madhu Lal Hussain and others* (2006 SCMR 1064), *Ajab Khan and others v. Government of N.W.F.P. and others* (2007 SCMR 860), *Muhammad Asif v. The State* (2017 SCMR 486), *Hayatullah v. The State* (2018 SCMR 2092), *Nadeem Hussain v. The State* (2019 SCMR 1290), *Muhammad Akram v. The State* (2009 SCMR 230), *Asif Iqbal and others v. The State* (2021 MLD 1783), *Syed Mehroz Mehdi Zaidi alias Mehdi Badshah v. The State* (2020 MLD 1344), *Syed Riffat Hussain and others v. The State* (2022 P. Cr. L.J. Note 108), *Syed Mehroz Mehdi Zaidi v. The State* (2023 YLR 665), *State through the Deputy Director (Law), Regional Directorate, Anti-narcotics Force v. Mujahid Naseem Lodhi* (PLD 2017 SC 671) and *Tasar Mehmood and another v. The State and others* (2020 SCMR 1013).

9. Learned Additional Prosecutor General, representing the State in the case, has fully supported the judgment being challenged. According to the prosecutor, the person who filed the complaint was also injured during the incident and he is a natural witness. The

complainant correctly identified the accused, at the time of recording his evidence before the trial court for committing murder of the deceased by using a firearm. This identification is also supported by medical evidence. The prosecutor also mentioned that the witness had identified the appellants before the Magistrate, and this identification could be considered reliable because it came from an independent witness, PW Liaquat Ali Khan. Lastly, the prosecutor argued that the appeals lack merit and are liable to be dismissed. In support these arguments, learned Additional Prosecutor General referred the cases of Muhammad Zaman v. The State (2007 SCMR 813) and Ghulam Abbas v. The State (2022 SCMR 1102).

10. We have carefully considered the arguments urged by both appellants' legal representatives and the Additional Prosecutor General of Sindh. They have also read all the evidence that was presented by the appellants' counsel during the proceedings, as well as, the judgment challenged. With the assistance of the counsels, they have presented the relevant case law in support of their contentions.

11. Based on the evidence adduced by the prosecution, particularly the medical evidence, the recovered empties and blood-stained soil from the crime scene, it has been convincingly established that on April 1, 2014, at 1:45 PM, at the specified location in Karachi, two unidentified assailants duly armed, fired shots at the deceased, Hassan, and the complainant, Sa'ad. This attack resulted in the death of Hassan and caused severe gunshot injuries to Sa'ad.

12. Complainant, Sa'ad, lodged the First Information Report thirty three (33) hours after the alleged incident. The delay, in this case, could not be considered detrimental to the prosecution's case as it was lodged against unknown culprits.

13. We have observed that the complainant's description of the assailants was vague. Despite being injured and present during the day time incident, he failed to provide detailed physical or facial features of the attackers, apart from mentioning that they were young men wearing pants. Complainant Sa'ad, being an eyewitness and was in the car with the deceased Hassan during the incident. Despite the daylight occurrence, identification of the appellants in a sudden and surprising nature of the incident, along with Sa'ad's attempt to take cover in the car, limited his opportunity to observe the attackers closely. We have noted that Sa'ad did not make any significant

changes or improvements to his account of the incident between the FIR and his subsequent statement under section 161 Cr. P.C.

14. The complainant's initial description in the FIR and subsequent statements lacking such description at the time of recording his evidence weakens the prosecution case. Even, though complainant Sa'ad had a brief glimpse of the appellants during the incident, the lack of physical and facial descriptions, coupled with the suddenness of the attack, made it difficult for him to accurately recognize the assailants. The appellants were arrested on May 6, 2014, and an identification parade was conducted on May 20, 2014, through the eyewitness Liaquat Ali Khan (PW) instead of the complainant Sa'ad, who was the natural witness. The investigating officer (I.O.) did not provide any explanation for this deviation. Sa'ad, the complainant and key witness, was not asked to identify the appellants in the identification parade. It is also settled principle of law that if accused were not named in the FIR, identification parade becomes necessary as held in the case of Farman Ali V. The State (1997 SCMR 971). This omission also led to adverse inferences under Article 129(g) of the Qanun-e-Shahadat Order, 1984. Moreover, despite not providing a detailed description of the appellants in his FIR and initial statement under section 161 Cr. P.C., the complainant recognized the appellants after a period of **seven (07) years** during his testimony recorded in court on February 13, 2021.

15. In essence, the defense is asserting that the delayed identification of the appellants by the complainant, coupled with the deviation from proper identification parade procedures, weakens the credibility and reliability of the identification, making it insufficient evidence to prove the guilt of the appellants. It is observed by us that this delayed identification, occurring long after the incident, lacked evidentiary value and could not be safely relied upon. It is true that we can convict based on the evidence of a sole eye witness Sa'ad however, based on the particular facts and circumstances of the case as discussed above we find that even if, the eye-witness was present at the time of the incident based on the reasons mentioned above he would not have been able to correctly, safely and reliably identify either of the appellants after a lapse of over **seven (07) years** at the time of recording his evidence. In this context, reliance is placed on the ruling in the case of Javed Khan v. State (2017 SCMR 524), which

emphasizes the necessity of obtaining an early hulia/description of an accused by an eyewitness in their statement under section 161 of the Criminal Procedure Code prior to conducting an identification parade. This requirement ensures a valid and reliable identification process in legal proceedings. The case underscores the importance of strictly following the rules governing identification parades as under:

*"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 parades, but there is a clear possibility arising out of their statements that they were assisted to do so by being shown the accused person 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 a 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).*

*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 he 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 Ahmad Khan (PW-6) as one of them. Nonetheless Subedar Mehmood Ahmad 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 serious 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. As regards the identification of the appellants before the trial court by Nasir Mehboob (PW-5), Subedar Mehmood Ahmed Khan (PW-6) and Idrees Muhammad (PW-7) that too will not assist the Prosecution because these witnesses had a number of opportunities to see them before their statements were recorded. In *State v Farman* (PLD 1985 SC 1), the majority judgment 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 in the unanimous judgment of this Court, delivered by Nasir Aslam Zahid J, in the case of *Muneer Ahmad 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 raise 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.”*

16. It transpire from the record that prior to recording evidence of complainant Sa’ad on 13.02.2021 he appeared on 26.12.2017, 10.02.2018, 17.07.2018 and 25.01.2021 when both appellants being in custody were produced before the trial Court and thereby the complainant had ample opportunity to see the appellants and in such circumstances identification before the trial Court was held unsafe in the case of Azhar Mehmood and others v. The State (2017 SCMR 135) as under:

*“During the trial the above mentioned eye-witnesses had maintained that the appellants facing the trial were the actual culprits and the 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. PW15 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. The State and others (1992 SCMR 2088), Muhammad Afzal alias Abdullah and another v. State and others (2009 SCMR 436), Nazir Ahmad 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)."*

17. Liaquat Ali Khan, an eyewitness, stated that he saw the assailants outside a school firing at two people in a car. During Liaquat Ali Khan's testimony, he didn't provide sufficient details about the accused's role in the crime, and his identification of the appellants was not corroborated by other evidence. Accordingly no reliable conclusion could be drawn from this identification parade particularly when, his name does not transpire in the FIR though it has been lodged with the delay of thirty three (33) hours. PW Liaquat Ali stated that the police arrived at the scene within five minutes of the incident and enquired about what had happened. He narrated about the incident seen by him, to the police. They also obtained his cellphone number and contacted him on April 3, 2014, two days after the incident occurred. The question that arises here is why, despite knowing that Liaquat Ali witnessed the incident, the police did not mention his name in the FIR. This omission raises doubts about the credibility of his testimony. None of the police officers who arrived at the scene immediately after the incident deposed about the presence of PW Liaquat Ali or the fact that he was questioned about the incident and his contact information was recorded. If the police had indeed spoken with PW Liaquat Ali, his name should have been mentioned in the FIR, lodged thirty-three hours after the incident took place. Moreover PW Liaquat Ali failed to give features and description of the accused in his statement U/S 161 Cr.P.C. and also failed to describe the role played by each accused at the time of committing the above crime. The Hon'ble Supreme Court of Pakistan in the case of Mehmood Ahmed and 3 others v. The State, reported in 1995 SCMR 127 held such identity parade being unreliable having no evidentiary value as under:

*"It is, therefore , clear that the proceedings of the identification parade where the appellants were picked up without describing the roles played by them in the crime suffer from illegality and infirmity rendering it completely unreliable having no evidentiary value."*

The reliance in this regard is also placed upon 2012 SCMR 522, 2017 SCMR 137 and 2018 SCMR 577.

18. The record shows that besides suffering from other legal infirmities which have been overlooked by the trial Court, the identification parade also carried an inherent defect as Magistrate Abdul Qadeer during his evidence also deposed that the witness did not disclose the specific role of the accused at the time of identification parade. It appears from the record that the appellants were complete strangers to the prosecution witnesses, therefore, due to lack of description about features and physique of the appellants in his 161 Cr.P.C. statement, the evidence of identification parade is not safe to be considered relevant under Article 22, the Qanun-e-Shahadat Order 10 of 1984, therefore, such evidence is not sufficient to be relied upon. Reliance is placed on the case of Sabir Ali alias Fauji v. The State (2011 SCMR 563).

19. The testimony of Magistrate Abdul Qadeer Buriro (PW-11), who conducted the identification parade, revealed discrepancies and lack of procedural adherence during the process. The Magistrate did not ensure that necessary precautions were taken during the parade. He has deposed that the witness did not disclose about specific role of the accused and so also features were not described in detail by the witness. Various details, such as the period of custody of the accused before the parade, were not verified. The Magistrate conducted the identification parade for the appellants in three cases on the same day. He testified that the parade was conducted jointly, and the accused remained in their original positions in the row during the identification process. It is 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 both the accused was held jointly and all the dummies used in the identification parade had different structures. Consequently, the fundamental purpose of conducting the identification parade was defeated, as held in the case of Mian Sohail Ahmed & others V. The state & others (2019 SCMR 956) as under:-

*6. Both the appellants were jointly seated in the lineup. The idea of identification parade or lineup is to stand or seat the suspect in a group of persons (dummies or fillers) that closely resemble the characteristics of the suspect, in order to test the recognition, memory, perception and observation of the witness and thus verify the testimony of the witness. Placing two or more suspects jointly in an identification parade (or joint parade), tarnishes the homogeneity, sameness and identicalness of the members of the parade and defeats the*

*very purpose of having a test identification parade. Joint parade passes for suggestive and indicative identification, compromising the reliability of the witness and opening doors to misidentification, rendering TIP unsafe and untrustworthy. See: In the matter of Kanwar Anwaar Ali (PLD 2019 SC 488) on joint identification parade.*

*7. No role was assigned to the suspects by the witnesses, especially when the first information report clearly describes two different roles to the appellants; one that of an assailant, while the other of a driver of a motorcycle who drove the assailant away. If a witness fails to give the description of the part played by the suspect in the crime, the credibility of the witness stands questioned as he fails to complete the picture of the crime scene, thus inviting caution and circumspection in assessing the evidentiary value of the identification evidence. This Court over the years has placed little reliance on such identification evidence. Even in the subsequent identification by the complainant in court, which has little evidentiary value, he failed to point an accusing finger at the appellants to say who did what, therefore the parts played by the appellants in the crime remain a mystery. See: In the matter of Kanwar Anwaar Ali (PLD 2019 SC 488) on the absence of a role assigned by the witness in an identification parade.*

20. The learned Magistrate admitted that he could not recall how long the accused had been in police custody before the identification parade. He also failed to remember the date of the offense, for which, the accused were brought in for their identification parade. Additionally, he acknowledged during cross-examination that neither the age of the accused nor, that of the dummies was mentioned in the memo. Furthermore, the memo did not specify that the dummies resembled the accused. When questioned, he responded that all dummies had different structures and they were the litigants. The Magistrate also could not remember whether the witness had disclosed the features of the accused in his 161 Cr.P.C statement. Furthermore, he failed to recall if he had inquired about the custody of the accused with the police and whether the accused had informed him that they had been in police custody since April 23, 2014. Additionally, it is noted that the identification parade, conducted on May 20, 2014, through witness PW Liaquat Ali Khan, was not attended by Sa'ad, the complainant being primary eyewitness. Absence of the complainant during the identification parade weakens the prosecution's case. Despite these inconsistencies and gaps in the evidence, the

complainant later identified the appellants after a significant period, raising doubts about the accuracy and reliability of his identification.

21. It is crucial to note that the mentioned identification parade was not conducted in accordance with the law. It was held jointly for multiple crimes on the same day. The learned Magistrate stated that in all the identification parades involving the accused, they were conducted jointly, and the accused remained in their original positions in the row.

22. The prosecution allegedly recovered the empties from the place of occurrence in this case and the same were dispatched to Forensic Laboratory and such FSL report has been produced by I.O./SIP Muhammad Aslam at Ex.12-H bearing Serial NO.FD/FA/2619/2014 received vide letter dated 08.04.2014 whereas, licensed 9mm pistols allegedly recovered from the appellants were sent to the Examiner of arms and such FSL report was produced by I.O./Inspector Tariq Ali at Ex.15/G bearing Serial NO. FD/EA/3853/2014. Linked With 3247/2014 and **not** with aforementioned Serial NO. 2619 which relates to the empties allegedly recovered in the case in hand. Even prosecution failed to produce the weapons during trial in their evidence to corroborate the alleged incident. Thus, the alleged recovery of weapons of offence is not help full to the prosecution. Reliance is placed upon the case of Muhammad Sohail V. State (2023 YLR 704).

23. The defense asserted that the prosecution must prove its case beyond a reasonable doubt, and any doubt should favor the accused. The reliance in this regard is placed on the case of Tariq Pervez v. The State (1995 SCMR 1345).

24. In short, the identification parade lacked essential details and adherence to proper procedures, making it unreliable as evidence. The prosecution failed to prove its case beyond a reasonable doubt.

25. Based on the reasons discussed above, the prosecution case against appellants is doubtful and the appellants are not found guilty due to insufficient evidence or uncertainties in the case. As a result, the conviction and sentence awarded to the appellants is set-aside. The appeals in hand filed by the appellants are allowed, and they are acquitted of the charges. The appellants are ordered to be released, unless they are wanted in any other custody case.

JUDGE

JUDGE

Hanif