Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Criminal Appeal No.34 of 2023

Muhammad Riaz alias Kala

Versus

The State and another.

Appellant By	:	Mr. Azhar Yousaf, Advocate.
Respondent By	:	Mr. Muhammad Naseem, learned State Counsel.
		Ikram Sajid, Inspector.
Assisted by	:	Aamir Ali Rana, Law Clerk, IHC.
Date of hearing		22.05.2024

*****

TARIQ MEHMOOD JAHANGIRI, J. This Criminal Appeal is filed under section 410 of the Code of Criminal Procedure, 1860 ('**CrPC**') against the impugned judgment dated 18.01.2023, passed by the Additional Sessions Judge, Islamabad (West), in case FIR No. 8/22, dated 20.04.2022, offences under sections 302, 353, 186, 34 of the Pakistan Penal Code, 1860 ('**PPC**'), registered at police station CTD, Islamabad, whereby appellant has been convicted and sentenced as under:

i. Life Imprisonment under section 302(b) of PPC and awarded compensation of Rs. 200,000 under section 544-A of CrPC to the legal heirs of the deceased which shall be recovered as arrears of land revenue if not paid and in case of non-payment of aforenoted compensation he shall further undergo 6 months Simple Imprisonment.

ii. 5 years Rigorous Imprisonment under section 324 of PPC along with Fine of Rs. 50,000 and in default of payment thereof he shall further undergo 6 months Simple Imprisonment.

iii. 3 months Rigorous Imprisonment under section 186 of PPC.

iv. 1-year Rigorous Imprisonment under section 353 of PPC.

The trial court further held that the sentences as mentioned above shall run concurrently and benefit of section 382-B of CrPC extended to the appellant-convict.

2. Brief facts of the case, as per the prosecution's story, are that the complainant Ammad Shah ASI and Muhammad Aqib C/1513, on 20.04.2022, were patrolling at Tramri Chowk, Lethrar Road in a private vehicle when they received information from a special informer that a drug peddler Adnan son of Zaman was openly selling powder and ice in the street of his house at Mohallah Chaudhrian Tarlai Kalan. On such information they took the officials of Eagle Squad, namely, Muhammad Akmal C/2539, Muhammad Sadiq C/4048, Farakh Rashid C/2426 and Sajid Nawaz C/8931, who were on duty at Lethrar road, with them and they reached Mohallah Chaudhrian near Haveli Syed Gul at about 1:10 AM. Then at the pointation of informer when police party moved forward to control the two-armed accused, who were admonished to disarm themselves, but instead they opened straight fire upon the police party with the intention of murder. One straight fire shot of accused Adnan landed on the chest of Muhammad Aqib C/1513 and he got injured and fell, meanwhile, the two accused took advantage of narrow streets and decamped the place of occurrence. The injured constable succumbed to injuries in a private vehicle on the way to Pakistan Institute of Medical Sciences hospital ('PIMS'). The accused Adnan in connivance with his unknown partner

accused with the intention of murdering the police party opened straight fire and martyred constable Muhammad Aqib C/1513 and disseminated fear and terror in public. The complainant Ammad Shah ASI and his colleagues witnessed the occurrence in the light of bulbs affixed outside the houses in the street and the unknown accused could be identified on his reappearance before them. Thus, based on complaint (**Ex. PC**), the FIR (**Ex. PD**) of this case was registered.

3. The investigating officer ('IO'/PW-16) commenced investigation after registration of FIR (**Ex. PD**) and arrested appellant on 25.04.2022. When investigation was completed, the IO submitted report/challan under section 173 of CrPC before Special Court (Anti-terrorism Court, Islamabad). After receiving the report/challan and fulfillment of procedural requirements, the Anti-terrorism Court on 2.09.2022 indicted appellant for offences under sections 302, 324, 353, 186 and 34 of the PPC read with section 7 of the Anti-terrorism Act, 1997 ('ATA') to which he pleaded not guilty. Before the said Court, the appellant moved an application under section 23 of ATA for expungement of section 7 of ATA which was allowed vide order dated 24.10.2022. Thereafter, the report/challan was transmitted to the court of ordinary jurisdiction. When report/challan was presented before the trial court the charged was framed afresh against the appellant for offences under sections 302, 324, 353, 186 and 34 of PPC on 14.11.2022 to which he pleaded not guilty and claimed trial. Insofar as main accused Adnan was concerned the trial court noted that he died due to firearm injury caused

by another accused on 23.04.2022 in a police encounter for which the case FIR No. 280/2022, dated 23.04.2022, under sections 302 and 186 of PPC read with sections 13/20/65 of A.O. was registered. Consequently, the trial court summoned and recorded the evidence of prosecution in the instant case.

4. The prosecution, during trial, produced the following witnesses to prove its case against the appellant:

i. Amir Shahzad Draftsman, **PW-1**

He joined investigation on 21.04.2022 and visited crime scene. On the direction of IO (PW-16) and at the instance of complainant Ammad Shah ASI (PW-4) in the presence of other eyewitnesses he took rough notes for site plan at the spot of occurrence. Based on such notes he prepared scaled site plan (**Ex. PA**), and it was handed over to IO on 22.04.2022.

ii. Akbar Ali ASI, Mohrir Malkhana, **PW-2**

He was posted at PS CTD on 20.04.2022 where the IO (PW-16) handed over to him three sealed parcels i. 5 empties, ii. blood-stained cloths/uniform of the deceased and iii. blood-stained cotton.

He handed over one sealed parcel of empties of .30 bore pistol to Muhammad Ramzan C/4860 (PW-6) on the direction of IO on 25.04.2022 for its transmission to NFSA. Further, on 26.04.2022 he handed over one sealed parcel of blood-stained cotton to Muhammad Asghar ASI (PW-8) on the direction of IO for its transmission to PFSA.

On 25.05.2022 Inspector Shams ul Akbar (PW-15) handed over to him one sealed parcel of pistol .30 bore. On the direction of IO (PW-16) the said parcel was handed over to Muhammad Ramzan C/4860 (PW-6) on 30.05.2022 for its transmission to NFSA.

iii. Farakh Rashid C/2426, **PW-3**

He witnessed the occurrence. He was part of the patrolling Eagle Squad on 20.04.2022 that accompanied the complainant Ammad Shah ASI (PW-4) and deceased to the place of occurrence. He was also witness of recovery memo **Ex. PB** of empties of .30 bore pistol. On 23.04.2022 he went to PIMS hospital on instructions of IO (PW-16) and identified the dead body of principal accused Adnan. On 13.05.2022 he identified appellant at Adiala jail during identification parade test.

iv. Ammad Shah ASI, Complainant, **PW-4**

He narrated the details of occurrence, at PIMS hospital, to Fazal Khaliq SI (**PW-13**/SHO of PS Shehzad Town) who drafted it as complaint (**Ex. PC**). He accompanied the deceased on the fateful night and witnessed the occurrence. He proceeded to PIMS hospital on instructions of IO (PW-16) and identified the dead body of principal accused Adnan on 23.04.2022. Further, on 13.05.2022 he identified appellant at Adiala jail during identification parade test.

v. Muhammad Sadiq C/4045, **PW-5**

He witnessed the occurrence. He was incharge of the patrolling Eagle Squad on 20.04.2022 that accompanied the complainant Ammad Shah ASI (PW-4) and deceased to the place of occurrence. Further, on 13.05.2022 he identified appellant at Adiala jail during identification parade test.

vi. Muhammad Ramzan C/4860, **PW-6**

On 25.04.2022 Mohrir Malkhana handed over to him one sealed parcel of empties of .30 bore pistol which he deposited in the NFSA, Islamabad on the same day. Moreover, on 30.05.2022 he took one sealed parcel of .30 bore pistol from Mohrir Malkhana and on the same day deposited it in the NFSA laboratory.

vii. Nabi Ullah SI, **PW-7**

He chalked out FIR (**Ex. PD**) based on complaint (**Ex. PC**) which was sent to PS CTD for registration of FIR through Sajid Raza HC/2108. He was also witness of recovery memo **Ex. PE** through which personal items (original CNIC P-1 and iPhone light mehroon P-2) of appellant were taken into possession at the time of arrest by IO (PW-16).

viii. Muhammad Asghar ASI, **PW-8**

On 26.04.2022 Mohrir Malkhana handed over to him one sealed parcel of blood-stained cotton which he deposited in PFSA laboratory on the same day.

ix. Muhammad Mushtaq, **PW-9**

He was father of deceased who identified the dead body of his real son vide identification memo **Ex. PF** on 20.04.2022. He was witness of recovery memo **Ex. PG** through which blood-stained uniform and blood-stained cotton were taken into possession. He also received the deceased's corpse vide receipt **Ex. PH**.

x. Tanveer Hussain Kiani SI, **PW-10**

He went to PIMS hospital on 20.04.2022 and inspected the dead body of deceased and prepared inquest report (**Ex. PI**). He prepared applications for postmortem (**Ex. PJ**) and deposit of body in mortuary (**Ex. PK**). The doctor gave him articles i.e. blood-soaked uniform (P1 to P6) and blood-stained cotton (P-7) which were handed over to IO (PW-16). He further handed over 13 documents P-8/1-13 pertaining to case FIR No. 280/2022 to IO (PW-16) which were taken into possession vide memo **Ex. PL** and he was one of the witnesses of the said memo.

xi. Dr. Muhammad Abdullah Khan, MLO PIMS, **PW-11**

According to him the deceased was brought from Tarlai Kalan, Islamabad on 20.04.2022 at about 1:45 AM by Tanveer Hussain Kiani SI (**PW-10**). On 20.04.2022 at about 6:00 AM he conducted postmortem of the deceased at PIMS hospital and prepared autopsy report (in the evidence of PW-11 the report is exhibited as Ex. PM but on record of trial court the original report is appended but no letter is exhibited on it) and issued death certificate (it is exhibited as Ex. PO but no letter is exhibited on it). He also endorsed inquest report (**Ex. PN**), application for postmortem (**Ex. PJ**), and application for retaining corpse of the deceased in mortuary (**Ex. PK**).

xii. Muhammad Naeem ASI, **PW-12**

On 25.04.2022 he was present at PS CTD, Islamabad. He was one of the witnesses of recovery memo **Ex. PE** through which original CNIC (P-1) and iPhone (P-2) of the appellant were taken into possession at the time of arrest. He was also witness of the appellant's disclosure in physical custody and

subsequent recovery proceedings of .30 bore pistol (P-9) which was taken into possession through recovery memo **Ex. PP**.

xiii. Fazal Khaliq SI, **PW-13**

He was posted as SHO of PS Shehzad Town when he received information about the occurrence on 20.04.2022 at about 1:30 AM. On the same night, he along with other police officials on official vehicle reached PIMS hospital at around 2:00 AM. He drafted the complaint (**Ex. PC**) based on Ammad Shah ASI's (**PW-4**) oral statement at PIMS hospital. The said complaint was sent to PS CTD for registration of FIR through Sajid Raza HC/2108 whereupon FIR (**Ex. PD**) was chalked out by Nabi Ullah SI (**PW-7**).

xiv. Abdullah Khan, AC Potohar, Islamabad, **PW-14**

He conducted test identification parade (IP) of the appellant in presence of witnesses at Adiala jail on 13.05.2022 in the instant case on an application which was marked to him on 11.05.2022. He prepared report (**Ex. PQ**) of the test IP which consisted of 6 pages.

xv. Shams ul Akbar Inspector, **PW-15**

He was given investigation of the instant case on 25.05.2022 when IO (PW-16) went on leave. During physical remand the appellant made a disclosure regarding crime weapon and led to its recovery from a graveyard. He made a sealed parcel of .30 bore pistol (P-9) which was taken into possession vide memo **Ex. PP**. He then prepared a complaint for registration of FIR, and he prepared un-scaled site plan of place of recovery (**Ex. PS**). He recorded statements of witnesses. He returned to PS CTD and handed over case property to Mohrir Malkhana. On 26.05.2022 he produced appellant before court and the appellant was taken into judicial custody. Subsequently, investigation of the instant case was transferred from him.

xvi. Abdul Sattar Baig Inspector, IO, **PW-16**

He was posted at PS CTD when he received information regarding occurrence on 20.04.2022 and he directly went to the place of occurrence where members of Eagle Squad, namely, Muhammad Akmal C/2539, Muhammad Sadiq C/4048, Farakh Rashid C/2426 and Sajid Nawaz C/8931 were

present. He (PW-16) secured 5 crime empties from the crime scene vide memo **Ex. PB**. He prepared un-scaled site plan. He recorded statements of witnesses and went to PIMS hospital. In the said hospital he met complainant Ammad Shah ASI (PW-4) who affirmed the veracity of FIR's contents. Tanvir Hussain Kayani SI (PW-10) was also present there who handed over relevant documents as well as articles i.e. blood-soaked uniform (P1 to P6) and blood-stained cotton (P-7) to him. He took into possession the last worn cloths of the deceased and blood-stained cotton vide memo **Ex. PG**. He also prepared identification memo (**Ex. PF**) of the body of the deceased which was identified by Muhammad Mushtaq (**PW-9**). The said corpse was handed over to Muhammad Mushtaq vide receipt **Ex. PH**. He recorded statements of witnesses. He then went to police station where he handed over case property to Mohrir Malkhana and recorded statement of Mohrir. Aamir Shahzad Draftsman (**PW-1**) handed over scaled site plan (**Ex. PA**) to him on 22.04.2022. On 23.04.2022 principal accused Adnan died whose dead body was identified by Ammad Shah ASI (**PW-4**) and Farakh Rashid C/2426 (**PW-3**) at PIMS hospital. Tanvir Kayani SI (**PW-10**) handed over to him 13 documents P-8/1-13 pertaining to case FIR No. 280/2022 which were taken into possession vide memo **Ex. PL**. He along with other police officials raided Pakistan Shadi Hall at Tramri Chowk on 25.04.2022 and arrested appellant. He conducted personal search of appellant and seized original CNIC (P-1) and iPhone color light mehroon (P-2) which were taken into possession through memo **Ex. PE**. He produced appellant before the court on 26.04.2022 who was sent to Adiala jail for test identification parade. On 11.05.2022 he submitted application before Ilaqa magistrate to conduct test identification parade and on 13.05.2022 four eyewitnesses identified appellant at Adiala jail. He received a copy of test identification parade on 16.05.2022. On 17.05.2022 he produced appellant before the Anti-terrorism Court and obtained 10 days physical remand. He interrogated the appellant from 18.05.2022 to 22.05.2022. Further, the JIT on 22.05.2022 held its meeting and endorsed the investigation and he obtained minutes of meeting of JIT on 23.05.2022. He again interrogated the appellant on 24.05.2022 and on the same day he took leave from duty due to an emergency. The investigation was then entrusted to Inspector Shams ul Akbar (PW-15). After leave he returned to duty on 30.05.2022 and took charge of the investigation in the instant case. He

recorded statements of relevant witnesses under section 161 of CrPC and prepared report under section 173 of CrPC which was submitted on 3.06.2022.

The prosecution produced reports of Forensic DNA and Serology Analysis, PFSA (labelled as **Ex. PU** but record reveals original is appended, and no such exhibit is affixed on it) and Firearms, NFSA (labelled as **Ex. PV** but record reveals original is appended, and no such exhibit is affixed on it) respectively and closed its evidence on 13.01.2023.

5. After closure of prosecution's evidence, the statement of appellant under section 342 of CrPC was recorded on 17.01.2023 wherein the incriminating evidence which surfaced during trial was put to him. He asserted his innocence and maintained that he was falsely implicated in the instant case and the police planted fake recovery of pistol on him. He denied any disclosure regarding pistol during physical remand and subsequent recovery of pistol from a graveyard. He neither opted to produce evidence in his defense nor appeared as witness under section 340(2) of CrPC. Subsequently, the trial court convicted and sentenced him as mentioned above. Hence, this Appeal.

6. The learned counsel for the appellant, *inter alia*, contends that the impugned judgment is not sustainable in the eyes of law and justice; the trial court based its decision on surmises and conjectures and the same is contrary to the evidence available on record; the conclusion arrived at by the trial court is perverse which resulted into miscarriage of justice; the appellant is falsely implicated in this case and he was not nominated in the

FIR; there are contradictions in the statements of witnesses regarding place of occurrence and identification of appellant; the identification parade test was not conducted in accordance with the settled principles of law; the source of light was not duly proved as the occurrence took place in the dark hours of night; the appellant had no previous criminal record when he was implicated in this case; all the material witnesses of prosecution are police officials and no independent witness was taken from public or locality; the recovery of pistol was effected in violation of section 103 of CrPC; neither caretaker nor watchman of the graveyard, i.e. place of recovery of pistol, were associated with recovery proceedings; the prosecution failed to adduce reliable, cogent and confidence inspiring evidence; and lastly submits that by extending benefit of doubt to the appellant his conviction and sentence are liable to be set aside.

7. Conversely, the learned state counsel, *inter alia*, contends that the prosecution adduced sufficient incriminating evidence against the appellant and established his criminal culpability beyond reasonable doubt; the appellant admitted his presence at the place of occurrence in his statement made under section 342 of CrPC; the recovery of .30 bore pistol has been effected from appellant; there is no previous enmity of witnesses to falsely depose against the appellant; there are no major contradictions in the statements of the witnesses; the trial court considered every piece of evidence available on record; and it rightly convicted and sentenced the

appellant vide impugned judgment and prayed for dismissal of the instant Appeal.

8. The submissions of learned counsel for the parties have been heard and record of the case has been examined with their able assistance.

9. Perusal of the record of case reveals that the trial court had not meticulously appreciated every aspect of the instant case. The prosecution's case against the appellant mainly hinged upon the ocular account of eyewitnesses, namely, Farakh Rashid (PW-3), Ammad Shah ASI (Complainant/PW-4), and Muhammad Sadiq (PW-5); the test identification parade of appellant by the said witnesses at Adiala jail which proceedings were recorded in the report (**Ex. PQ**) of Abdullah Khan (PW-14); the recovery of pistol .30 bore (P-9) from the graveyard of Tarlai Kalan and medical evidence i.e. postmortem report and Dr. Muhammad Abdullah Khan (**PW-11**/MLO, PIMS).

10. It is the prosecution's case that the principal accused Adnan and his unknown companion opened straight fire upon the police party. The eyewitnesses, namely, Farakh Rashid (PW-3), Ammad Shah ASI (Complainant/PW-4), and Muhammad Sadiq (PW-5) testified that, during the entire occurrence, only the deceased constable Muhammad Aqib got injured who received a single shot on his chest which was caused by the accused Adnan with a pistol. The only allegation to the extent of the appellant is that he (along with the principal accused) made direct firing upon police party with the intention of murder and fled the crime scene.

11. It is evident from the complaint (**Ex. PC**) as well as FIR (**Ex. PD**) of the instant case that the appellant was not specifically nominated because he was unknown to the eyewitnesses of prosecution. Also, the description/features of appellant and duration of occurrence are not mentioned in the said complaint or FIR. Further, Muhammad Naeem (ASI/PW-12), during cross-examination, deposed that the appellant was arrested on 25.04.2022 at 10:00 AM and according to IO (PW-16) the appellant was produced before court on 26.04.2022 who was then sent to judicial custody for test IP.

12. To confirm the identity of appellant for his involvement in the instant case his test identification parade ('IP') was conducted by Abdullah Khan (PW-14/AC, Potohar) on 13.05.2022 at Adiala jail in the presence of eyewitnesses. The proceedings of the said test IP were recorded in the report (**Ex. PQ**) wherein it is mentioned that seven dummy persons along with appellant were lined up in a row, but no description of the dummies or appellant is provided except their names with parentage. Even in the FIR neither description of appellant nor duration of the occurrence was mentioned. Also, the appellant's position, i.e. serial No. 8, was not changed throughout the IP proceedings. Moreover, the Abdullah Khan (PW-14) in his report (**Ex. PQ**) had not noted the time spent by appellant in police custody prior to test IP.

13. Insofar as the role of appellant is concerned, the Farakh Rashid (PW-3), during IP proceedings, stated that the appellant fled from the crime

scene while firing upon the police whereas during trial he deposed that the appellant fled the crime scene by taking advantage of narrow streets. Similarly, the Muhammad Sadiq (PW-5), during IP proceedings, stated that the appellant and his companion Adnan decamped from the place of occurrence and resorted to firing but during trial he deposed that the appellant fled the crime scene by taking advantage of narrow streets. According to Ammad Shah ASI's (PW-4/complainant) statement, during IP proceedings, the appellant and accused Adnan fled the crime scene while resorting to fire and during trial he deposed that they both fled the crime scene by taking advantage of narrow streets while resorting to fire. However, in the complaint (**Ex. PC**) and FIR (**Ex. PD**) the PW-4 categorically mentioned that both the accused took advantage of narrow streets and decamped from the place of occurrence. These conflicting statements further impeach the credibility of eyewitnesses.

14. The Supreme Court in a case reported as **PLD 2019 SC 488** endorsed certain requirements and safeguards formulated by Lahore High Court in the case of *Muhammd Yaqoob and another* ***versus*** *The State* (**1989 PCrLJ 2227**) pertaining to the test identification parade and it categorically held that the said guidelines must be followed and observed which reads as under:

> *"23. Although there is no law, which prescribes any such precautions yet the necessary guidelines are available in the form of executive instructions and judicial pronouncements. Some of them are summarised as under:-*
>
> > ***(a)*** *Memories fade and visions get blurred with passage of time. Thus, an identification test, where an unexplained and unreasonably long*

period has intervened between the occurrence and the identification proceedings, should be viewed with suspicion. Therefore, an identification parade, to inspire confidence, must be held at the earliest possible opportunity after the occurrence;

(b) a test identification, where the possibility of the witness having seen the accused persons after their arrest cannot be ruled out, is worth nothing at all. It is, therefore, imperative to eliminate all such possibilities. It should be ensured that, after their arrest, the suspects are put to identification tests as early as possible. Such suspects should preferably, not be remanded to police custody in the first instance and should be kept in judicial custody till the identification proceedings are held. This is to avoid the possibility of overzealous I.Os. showing the suspects to the witnesses while they are in police custody. Even when these accused persons are, of necessity, to be taken to Courts for remand etc. they must be warned to cover their faces if they so choose so that no witness could see them;

(c) identification parades should never be held at police stations;

(d) the Magistrate, supervising the identification proceedings, must verify the period, if any, for which the accused persons have remained in police custody after their arrest and before the test identification and must incorporate this fact in his report about the proceedings;

(e) in order to guard against the possibility of a witness identifying an accused person by chance, the number of persons (dummies) to be intermingled with the accused persons should be as much as possible. But then there is also the need to ensure that the number of such persons is not increased to an extent which could have the effect of confusing the identifying witness. The superior Courts have, through their wisdom and long experience, prescribed that ordinarily the ratio between the accused persons and the dummies should be 1 to 9 or 10. This ratio must be followed unless there are some special justifiable circumstances warranting a deviation from it;

(f) if there are more accused persons than one who have to be subjected to test identification, then the rule of prudence laid down by the superior Courts is that separate identification parades should ordinarily be held in respect of each accused person;

(g) it must be ensured that before a witness has participated in the identification proceedings, he is stationed at a place from where he cannot observe the proceedings and that after his participation he is lodged at a place from where it is not possible for him to communicate with those who have yet to take their turn. It also has to be ensured that no one who is witnessing the proceedings, such as the members of the jail staff etc., is able to communicate with the identifying witnesses;

> ***(h)*** *the Magistrate conducting the proceedings must take an intelligent interest in the proceedings and not be just a silent spectator of the same bearing in mind at all times that the life and liberty of some one depends only upon his vigilance and caution;*
>
> ***(i) the Magistrate is obliged to prepare a list of all the persons (dummies) who form part of the line-up at the parade alongwith their parentage, occupation and addresses;***
>
> ***(j)*** *the Magistrate must faithfully record all the objections and statements, if any, made either by the accused persons or by the identifying witnesses before, during or after the proceedings;*
>
> ***(k)*** *where a witness correctly identifies an accused person, the Magistrate must ask the witness about the connection in which the witness has identified that person i.e. as a friend, as a foe or as a culprit of an offence etc. and then incorporate this statement in his report;*
>
> ***(l)*** *and where a witness identifies a person wrongly, the Magistrate must so record in his report and should also state the number of persons wrongly picked by the witness;*
>
> ***(m)*** *the Magistrate is required to record in his report all the precautions taken by him for a fair conduct of the proceedings and*
>
> ***(n)*** *the Magistrate has to give a certificate at the end of his report in the form prescribed by C.H.II.C. of Vol. III of Lahore High Court Rules and Orders.*
>
> *24. The measures above listed should, however, not be taken as exhaustive of the steps which are required to be taken before, during and after the identification proceedings. All these requirements are no doubt mandatory but at the same time they are only illustrative of the precautions which the Courts of law demand before some respect can be shown to the evidence offered through the test identification proceedings."*

Likewise, the Supreme Court further elaborately enunciated on the test identification parade in the case titled as *Mian Sohail Ahmed* ***versus*** *The State, etc* (**2019 SCMR 956**) and the relevant excerpts are reproduced below for ease of reference:

> *"5. The Test Identification Parade ("TIP") (Ex/PN) which was conducted by the Special Judicial Magistrate (PW-13) on 13.6.2006 is fraught with several infirmities diminishing its probative and evidentiary value. Brief description of the two unknown persons (later on identified as the appellants) in the first information report mentions their height, bodily size and colour of the skin.*

TIP proceedings are silent regarding the description of the unknown accused given by the complainant in the report. ***TIP can only commence, once suspects matching the description in the crime report or in the statements of the witnesses under section 161 Cr.P.C have been arrested. Matching the description in the first information report is the starting point towards identification of the unknown accused. It is, therefore, uncertain how the appellants were hurled and lined-up for the identification parade without the Magistrate first matching the description given by the complainant. Selection of the suspects, without any correlation with description of the accused in the first information report, raises doubts and makes the identification proceedings unsafe and doubtful rendering the identification evidence inconsequential. This is just a shade apart from cases where there is no description of the accused in the FIR, the effect being the same, casting doubts on the credibility of the test identification parade****. See State/Government of Sindh v. Sobharo (1993 SCMR 585), Muhammad Afzal alias Abdullah v. State (2009 SCMR 436), Sabir Ali alias Foji v. State (2011 SCMR 563) and Muhammad Abdul Hafeez v. State of A.P (AIR 1983 SC 367)."*

"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 (PLJ 2019 SC (Cr.C.) 153) on joint identification parade."*

"15. After the test identification parade, the court must verify the credibility of the eye witness by assessing the evidence on the basis of the factors or estimator variables discussed above. ***Identification of an accused, therefore, becomes a two-step process. First, the suspects undergo a test identification parade and second, the credibility of the eye witness is assessed by weighing the evidence in the light of the estimator variables****."*

Similarly, the Supreme Court in the following cases noted that when description/features of unknown accused are not mentioned in crime report/FIR, such omissions cast doubts on the credibility of test identification parade:

i. *Sabir Ali alias Fauji* ***versus*** *The State* **(2011 SCMR 563)**

"6. We have given our anxious consideration to the contentions of the learned counsel of the parties and perused the record. ***It is an admitted fact that the complainant had not mentioned the name of any of the accused in the F.I.R. He also did not mention description/features of the accused persons in the F.I.R. It is settled principle of law that it is the duty and obligation of the complainant to give material particulars of the case in the contents of the F.I.R. without giving detail of incidental matter*** *as per law laid down by this Court in Muhammad Hussain's case (1993 SCMR 1614)....****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). 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)....****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 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..."*

ii. *Muhammad Afzal alias Abdullah and others* ***versus*** *The State and others* **(2009 SCMR 436)**

"9. Admittedly, ***the occurrence took place in the dark hours of the night. It has not been disclosed as to how the witnesses were able to identify the culprits****. It can, at the most, be presumed that they were seen in the headlights of the vehicle, however, in that case the culprits could not have been seen by the P.Ws. more than once and that too, for a while. Though it is alleged that the deceased as well as the complainant were fired at by one of the culprits yet, it has not been pointed out as to who was he? Nor his description by appearance was given in the F.I.R. Absence of such details in the report/F.I.R. militates against bona fides of the prosecution and greatly mars evidentiary value of the test identification parade.* ***It is well-settled that when description by appearance of the accused is not given in the report/F.I.R. and specific role is not attributed to him, his identification in Court for the first time, in the absence of strong corroboratory evidence, is not safe to be relied upon***

because by the passage of time memory fades and possibility that an accused might not have been mistakenly picked out is augmented."

iii. *State/Government of Sindh through Advocate-General, Sindh, Karachi* ***versus*** *Sobharo* **(1993 SCMR 585)**

"11. It is now very clear that the case of Muhammad Yousaf Zai (supra) is distinguishable and observation of the High Court is confined to the peculiar facts of that case of bank fraud only and there was no intention to lay down general proposition as is being convassed before us by learned AA.-G. ***that identification test need not be held if eye-witnesses are able to identify the accused before the trial Court even in murder cases. If this view is accepted, then whole legal infrastructure of identification test made under the law and supported by case-law would collapse and become redundant****. Legal position stated in the other two rulings is correct but would not apply to the facts of the present case in which* ***the eye-witnesses did not give name of the accused to the complainant nor gave description of his features for the reason that he was not known to them from before and was seen by them for the first time. We, therefore, agree with the trial Court that identification test has no value for want of description of respondent in F.I.R.****"*

iv. *Muhammad Asif and another* ***versus*** *The State* **(2024 YLR 1149)**

"4....Since ***none of the accused was nominated in FIR****, the prosecution has heavily relied upon identification parade in order to prove culpability in this case. In this context, I have noted that* ***both the eye-witnesses*** *namely Tauseef Ahmad complainant (PW.1) and Taseer Usman (PW.2)* ***could not mention any descriptive features of the assailants during investigation before the police as well as before learned trial court except that the accused were of average height.*** *I may observe here that* ***this material discrepancy, alone, is sufficient to diminish the evidentiary value of identification parade*** *and while holding so, I am fortified from the dictum laid down by the apex* ***Supreme Court of Pakistan*** *in the case of "Sabir Ali alias Fauji v. The State" (2011 SCMR 563), wherein it has been* ***settled that identification test is of no value when description/features of accused is not given in the contents of the FIR****...."*

15. According to complaint (**Ex. PC**) and FIR (**Ex. PD**), the occurrence took place in the dark hours of night on 20.04.2022 at about 1:10 AM. The source of light in the complaint, FIR and scaled site plan (**Ex. PA**) is mentioned as bulbs affixed outside houses in the street at crime scene but the same were not secured by the IO (PW-16) and no plausible explanation has been furnished for such a critical omission. It was stated in the complaint, FIR, Ammad Shah's (**PW-4**) examination-in-chief as well as in

the testimony of Farakh Rashid (**PW-3**) that the occurrence was witnessed in streetlight affixed outside houses but in their cross-examination the Ammad Shah's (**PW-4**) and Muhammad Sadiq (**PW-5**) deposed that light of vehicle was also available when they had seen the occurrence. It is patently evident from record of the entire case that neither the bulbs affixed outside houses at crime scene nor the said vehicles were taken into possession by the IO during investigation to support the prosecution's case against the appellant especially when the occurrence took place in the dark hours of night and one of the accused was not known to the eyewitnesses. The IO (**PW-16**) further admitted in his cross-examination that he had not shown the presence of source of light in rough site plan prepared by him. The scaled site plan (**Ex. PA**) further reveals that the eyewitnesses, except the deceased constable Aqib, were at a considerable distance of more than seventeen feet from the appellant. Therefore, in these circumstances the source of light becomes crucial for correct identification of appellant. Similarly, the Supreme Court in the matter of *Mian Sohail Ahmed* ***versus*** *The State, etc* (**2019 SCMR 956**) noted that the source of light was not secured during investigation and by applying standards of test identification parade held that:

> *"16. Applying the "estimator variables" to the instant case we see that* ***the site-plan shows that the appellants were at a distance of 15 to 30 feet from the complainant*** *in the empty space of the godowns abutting a road with no light.* ***The source of light in the empty area behind the godowns has not been secured as evidence during the investigation. The witness was fired at first and then the deceased was shot dead, we notice that factors like weapon focus and distance and lighting are visible in this case. The duration of the event has not been specified in the crime report. In this background, it cannot be said with certainty that the visual recognition of the appellants by***

> ***the complainant on the fateful night was unhindered and unhampered especially when he was fired at first and allegedly saw the occurrence under stress of a threat. Based on the above "estimator variables," possibility of misidentification cannot be ruled out, thereby making it unsafe to place reliance on the identification evidence.***"
>
> *"17. For the above reasons, appellants stand acquitted of the charge by extending them benefit of the doubt...."*

In another case titled as *Azhar Mehmood and another* ***versus*** *The State* (**2017 SCMR 135**) the Supreme Court, among other things, noticed that source of light was not taken into possession during investigation and its relevant passages are reproduced below for ease of reference:

> *"3. It has straightaway been noticed by us that* ***the occurrence in this case had taken place after dark and in the FIR no source of light at the spot had been mentioned by the complainant. Although in the site-plan of the place of occurrence availability of an electric bulb near the spot had been shown yet no such bulb had been secured by the investigating officer during the investigation of this case.*** *The present appellants had not been nominated in the FIR wherein it had been mentioned that the offences in issue had been committed by six unknown culprits but later on it had been maintained by the prosecution that the present appellants had been overheard by a witness discussing amongst themselves the commission of offences by them relevant to the dacoity and murders taking place at the house of the complainant....appellants had not been identified with reference to any role played by them in the incident in issue. It has consistently been held by this Court that such a test identification parade is legally laconic and is of no evidentiary value...* ***identification of a culprit before the trial court during the trial has repeatedly been held by this Court to be unsafe****..."*

16. Furthermore, the eyewitnesses had not explained in their testimonies as to how the deceased Muhammad Aqib came into close contact with the accused Adnan when the other witnesses were positioned at a considerable distance from both the accused. On the one hand, the eyewitnesses deposed that the main accused Adnan and his unknown companion opened straight fire upon them when they approached the said accused. On the other hand, the scaled site plan (**Ex. PA**) shows that the deceased

Muhammad Aqib was shot from a close range of three and a half feet (seat of injury was blackened as confirmed by postmortem report and Dr. Muhammad Abdullah Khan (**PW-11**)) by the accused Adnan and the other eyewitnesses (including complainant) were positioned at points 3, 4, and 5, respectively, at a distance of more than seventeen feet. Thus, these circumstances create a doubt that the events might have occurred in a different manner than as reported by witnesses of prosecution.

17. Therefore, considering the above-mentioned circumstances and legal position, it would be unsafe to place reliance on test identification parade of this case. The prosecution failed to prove beyond reasonable doubt that the appellant was the unknown companion of deceased accused Adnan who opened fire upon police party on that fateful night or he was present at the time of occurrence. Consequently, the ocular account is of no help to the prosecution's case.

18. Another aspect of the instant case is the recovery of pistol from a graveyard on the disclosure of the appellant while he was in police custody. It is apparent from the record of case that the place of recovery, i.e. bushes in the graveyard of Tarlai Kalan, was an open place and it cannot be said with certitude that the public had no access to it. It is nowhere in the prosecution's evidence that the appellant had exclusive access to the said premises and no one else had control over it. Further, Shams-ul-Akbar Inspector (**PW-15**; relevant IO of recovery of pistol), during cross-examination, deposed that he neither called the caretaker nor

any chowkidar (watchman) of aforesaid graveyard. Moreover, the recovery was effected from appellant on 25.05.2022 whereas the occurrence in which the pistol (**Ex. P9**) was purportedly used took place on 20.4.2022. It is quite clear that the recovery was made after a delay of more than 30 days and that too from a place which was not exclusively accessible to the appellant. According to un-scaled site-plan of place of recovery (**Ex. PS**) the Mohallah Chaudhrian was situated in front of the place of recovery whereas the Muhammad Naeem ASI (**PW-12**) and IO (PW-15), in their cross-examination, admitted that no private/independent person from the public or nearby locality was associated as witness during the recovery proceedings.

19. Thus, it is evident from the record that the IO/PW-2 had not furnished any plausible explanation as to why he did not associate any private witness from locality with recovery proceedings. Also, it does not appeal to a prudent mind that the place of recovery was exclusively accessible to or in the possession of the appellant up to the time of recovery. The Supreme Court in a case titled as *State through Advocate-General, Sindh* ***versus*** *Bashir and others* (**PLD 1997 SC 408**) held that two witnesses from the public of locality must be associated with recovery proceedings as mandated by section 103 of the CrPC unless it becomes impossible to have such witnesses:

> *"9. As regards the above second submission of Mr. M.M. Aqil, it may be observed that it has been repeatedly held that* ***the requirement of section 103, Cr.P.C., namely, that two members of the public of the locality should be Mashirs to the recovery, is mandatory unless it is shown by the prosecution***

that in the circumstances of a particular case it was not possible to have two Mashirs from the public. In this regard, it will suffice to refer to a recent judgment of this Court in the case of Mushtaq Ahmad v. The State PLD 1996 SC 574. In the case in hand, SIP Muhammad Rafique has not been able to give any cogent explanation as to why he was unable to Secure two Mashirs from the public....no efforts were made by him to secure two Mashirs from the public. In this view of the matter, the recoveries are doubtful.

10. Reverting to the third submission that since in support of the case under section 13-D of the Arms Ordinance the recovery witnesses were the police personnel, no implicit reliance can be placed on their evidence, it may be stated that he has relied upon the following observation from the judgment of this Court in the case of Mushtaq Ahmad v. The State (supra):--

> *"(v) That likewise there is a marked distinction between a case in which the offence charged with is the recovery of the article itself like recovery of an unlicensed Klashnikov and a case in which the article recovered e.g. a crime weapon is to be used as a corroborative piece of evidence. In the former case if the witnesses to the recovery were police personnel though it was possible to have two Mashirs from the locality where recovery was made, their testimony in the absence of other reliable pieces of evidence would not warrant conviction, whereas in the latter case, if other pieces of evidence on record are free from doubt, the testimony of the police personnel if otherwise free from any legal infirmity may be accepted;"*

The above extract from the above judgment of this Court lends support to Mr., Aqil's above submission. Therefore, on this account also the conviction under section 13-D of the Arms Ordinance cannot be sustained."

Likewise, the Supreme Court in a prior seminal case of *Mushtaq Ahmad* ***versus*** *The State* (**PLD 1996 SC 574**) enunciated section 103 of CrPC with reference to relevant precedents and it settled the following principles:

> *"13.* ***From the above provisions of Cr.P.C. and the case-law, the following principles are deducible:--***
>
> ***(i)*** *That section 103, Cr.P.C. relates to a search of a place situate in a locality and not to a search of a person;*
>
> ***(ii) That the requirement of section 103, Cr.P.C. that the officer or the other person who is about to make search of a place under Chapter VII of the Cr.P.C. to call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness search though is procedural but is of mandatory***

in nature. It is designed and intended to guard against any possible chicanery and concoction;

(iii) That if in spite of the best efforts on the part of the officer of the other person who made the search, two or more respectable inhabitants had not attended and witnessed the search and if there was nothing on record to cast doubt about the bona fide of the officer or the other person, the above search would not be vitiated and the testimony of the officer concerned could be relied upon.

(iv) That there is a marked distinction between a case in which compliance of section 103, Cr.P.C. is made and a case in which no efforts to comply with the same were made and the police personnel were made Mashirs to the recovery. In the former case, failure to produce two respectable inhabitants as witnesses on the Court for a justifiable reason free from any doubt would justify the acceptance of his or their testimony, whereas the latter case, the search would lose its credibility particularly when the testimony of such Mashirs is challenged by the defence in the cross-examination;

(v) That likewise there is a marked distinction between a case in which the offence charged with is the recovery of the article itself like recovery of an unlicensed Klashnikov and a case in which the article recovered e.g. a crime weapon is to be used as a corroborative piece of evidence. In the former case if the witnesses to the recovery were police personnel though it was possible to have two Mashirs from the locality where recovery was made, their testimony in the absence of other reliable pieces of evidence would not warrant conviction, whereas in the latter case, if other pieces or evidence on record are free from doubt, the testimony of the police personnel if otherwise free from any legal infirmity may be accepted;

(vi) That there is also a marked distinction between a case in which a police officer is an eye-witness to the commission of an offence like a murder on a road where he is on duty and a case in which he is an investigating officer and as such becomes a Mashir to the recovery of a crime weapon. In the former case, his testimony is as good as of any other witness from the public, but in the latter case in the absence of any justifiable reason not to make two or more respectable inhabitants of the locality as witnesses to the recovery, implicit reliance cannot be placed on the recovery if the same is challenged by the defence in the cross-examination;

(vii) That the question, whether testimony of a police official as a Mashir to the recovery of an offending article is to be accepted or not besides testing on the touchstone of the above legal principles, depends on the facts of each case; the Court will have to discern inter alia, as to whether such witness bore any animus against the accused involved or was he not over-zealous investigating officer/witness."

Reliance is also placed on *Manjhi **versus** State* (**PLJ 1996 Cr.C. (Karachi) 1453**); *Ghulam Mustafa **versus** The State* (**2011 PCrLJ 723**).

20. Moreover, there is a contradiction regarding the item in which the pistol (**Ex. P9**) was wrapped when it was recovered from the graveyard. As per the recovery memo (**Ex. PP**) and un-scaled site plan of recovery place (**Ex. PS**) the said **pistol was wrapped in an envelope of blue colour** whereas the Muhammad Naeem ASI (**PW-12**) in his cross-examination deposed that it was wrapped in a **shopper of black colour** and Shams-ul-Akbar Inspector (**PW-15**; relevant IO of recovery of pistol) in his examination-in-chief deposed that it was wrapped in a **shopper of blue colour**. The said witnesses accompanied the appellant in the whole process and witnessed the entire recovery proceedings, so their contradictory statements, regarding the first thing (i.e. black/blue colour envelope or shopper) which was to be noticed when the said pistol was recovered from the bushes of graveyard, cannot be overlooked as mere minor discrepancies.

21. Further, in this case five crime empties of .30 bore pistol were recovered from the crime scene on 20.04.2022 which were taken into possession by IO through recovery memo (**Ex. PB**). The said empties were sent to NFSA for firearms report on 25.04.2022. The IO (**PW-16**) deposed that on the same day he arrested Appellant. The pistol from appellant was recovered on 25.05.2022 which was secured through recovery memo (**Ex. PP**) and it was sent to NFSA on 30.05.2022. The record of the trial court

shows that the original NFSA report has been annexed with file, but no letter is exhibited on it. The said report corroborated that two crime empties were fired from the same pistol and remaining three were not fired from it. This fact alone does not strengthen the case of prosecution against the appellant because the recovery of the said pistol from the possession of the appellant is not proved beyond reasonable doubt. Even it is now well settled that recovery of a crime weapon is corroborative piece of evidence. In this regard the Supreme Court in the case of *Naveed Asghar and others* ***versus*** *The State* (**PLD 2021 SC 600**) authoritatively held that:

> *"29. Even otherwise,* ***recovery of weapon of offence is only a corroborative piece of evidence****; and* ***in absence of substantive evidence, it is not considered sufficient to hold the accused person guilty of the offence charged****.* ***When substantive evidence fails to connect the accused person with the commission of offence or is disbelieved, corroborative evidence is of no help to the prosecution as the corroborative evidence cannot by itself prove the prosecution case****.*[1]*..."*

22. Insofar as the medical evidence is concerned, the Dr. Muhammad Abdullah Khan (**PW-11**/MLO PIMS) deposed that the deceased constable Muhammad Aqib was brought from Tarlai Kalan, Islamabad on 20.04.2022 at about 1:45 AM by Tanveer Hussain Kiani SI (**PW-10**). He conducted autopsy of the deceased at PIMS hospital on 20.04.2022 at about 6:00 AM and prepared postmortem report (in the evidence of PW-11 the report is exhibited as Ex. PM but on record original is filed and no letter is exhibited on it). The said report confirmed that the deceased received a firearm injury of 1x1 CM on his left front of the chest i.e. entry wound, and no exit

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[1] See Saifullah v. State, 1985 SCMR 410 (4-MB); Ali Muhammad v. Bashir Ahmed, 2003 SCMR 868; Israr-Ul-Haq v. Muhammad Fayyaz, 2007 SCMR 1427; Hayatullah v. State, 2018 SCMR 2092 (5-MB).

wound was present. Presence of blackening was noted around the seat of injury and as per the report the deceased died within two minutes of injury. PW-11 opined that cause of death was firearm injury which ruptured and damaged left lung, hemothorax, and heart and he noted that all injuries were ante mortem and such injury was sufficient in ordinary course of nature to cause death.

23. In the complaint (**Ex. PC**), FIR (**Ex. PD**) as well as in the testimonies of eyewitnesses (**PW-3 to 5**) it was categorically and consistently stated and deposed during trial that the accused Adnan (who had died in a crossfire with police in another case as already mentioned above) had caused firearm injury on the chest of the deceased constable Muhammad Aqib. According to prosecution only the deceased was injured, and all other police officials had not received any sort of injury during the entire occurrence. Admittedly, the appellant had not caused injury to anyone in the instant case, so the medical evidence is also not helpful to prosecution's case against the appellant. In this regard the Supreme Court in the case titled as *Liaqat Ali and others **versus** The State and others* (**2021 SCMR 455**) held that:

> *"4.... The **medical evidence was of no avail to the extent of the present appellants because admittedly no specific injury had been attributed to them** and, thus, **no independent confirmation was available vis-a-vis the allegation levelled against them regarding effectively firing at the deceased and the injured victims**...."*

It is settled law that the medical evidence is not a corroborative piece of evidence, rather it is supportive or confirmatory or explanatory in nature. The Supreme Court in the case of *Naveed Asghar and others **versus** The*

State (*Supra*) eloquently expounded on the nature of medical evidence in the following terms:

> *"31. The prosecution has attempted to complete the chain of circumstantial evidence by medical evidence relating to the post mortem examinations of the deceased persons. This evidence proves only the factum that death of the deceased persons was caused by cutting their throats through some sharp edge weapon; it does in no way indicate who had cut their throats and with what particular weapon.* ***Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not "corroborative evidence" in the sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with the commission of offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.***[2] *Therefore, the medical evidence is of little help to the prosecution for bringing home the guilt to the petitioners."*

24. In view of the above discussion, I have arrived at the conclusion that the prosecution did not prove its case against the appellant beyond reasonable doubt. The evidence of the prosecution is neither confidence inspiring nor unimpeachable. Thus, I am of the considered view that the appellant is entitled to benefit of doubt. In this regard reference is made to the following judgments:

i. *Ahmad Ali and another* ***versus*** *The State* **(2023 SCMR 781)**

> *"12. Even otherwise,* ***it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple***

[2] See Yaqoob Shah v. State, PLD 1976 SC 53; Machia v. State, PLD 1976 SC 695; Muhammad Iqbal v. Abid Hussain, 1994 SCMR 1928; Mehmood Ahmad v. State, 1995 SCMR 127; Muhammad Sharif v. State, 1997 SCMR 866; Dildar Hussain v. Muhammad Afzaal, PLD 2004 SC 663; Iftikhar Hussain v. State, 2004 SCMR 1185; Sikandar v. State, 2006 SCMR 1786; Ghulam Murtaza v. Muhammad Akram, 2007 SCMR 1549; Altaf Hussain v. Fakhar Hussain, 2008 SCMR 1103; Hashim Qasim v. State, 2017 SCMR 986.

infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right*. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. the State (2022 SCMR 1567), Sajjad Hussain v. the State (2022 SCMR 1540), Abdul Ghafoor v. the State (2022 SCMR 1527 SC), Kashif Ali v. the State (2022 SCMR 1515), Muhammad Ashraf v. the State (2022 SCMR 1328), Khalid Mehmood v. the State (2022 SCMR 1148), Muhammad Sami Ullah v. the State (2022 SCMR 998), Bashir Muhammad Khan v. the State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. the State (2021 SCMR 736), Muhammad Imran v. the State (2020 SCMR 857), Abdul Jabbar v. the State (2019 SCMR 129), Mst. Asia Bibi v. the State (2019 PLD 64 SC), Hashim Qasim v. the State (2017 SCMR 986), Muhammad Mansha v. the State (2018 SCMR 772), Muhammad Zaman v. the State (2014 SCMR 749 SC), Khalid Mehmood v. the State (2011 SCMR 664), Muhammad Akram v. the State (2009 SCMR 230), Faheem Ahmed Farooqui v. the State (2008 SCMR 1572), Ghulam Qadir v. the State (2008 SCMR 1221) and Tariq Pervaiz v. the State (1995 SCMR 1345)."*

ii. *Mst. Hajira Bibi alias Seema and another* ***versus*** *Abdul Qaseem and another* **(2023 SCMR 870)**

> "***For the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused***."

iii. *Bashir Muhammad Khan* ***versus*** *The State* **(2022 SCMR 986)**

> *"It is a settled law* ***that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right****. The conviction must be based on unimpeachable; trustworthy and reliable evidence.* ***Any doubt arising in prosecution's case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt****."*

iv. *Atif Zareef and others* ***versus*** *The State* **(PLD 2021 SC 550)**

> *"****The rule of giving benefit of doubt to accused person is essentially a rule of caution and prudence and is deep rooted in our jurisprudence for safe administration of criminal justice. Releasing a guilty by mistake is better than punishing an innocent by mistake.*** *We, therefore, accept this appeal to the extent of appellant Nafees Ahmad, set aside his conviction and sentence, and acquit him of the charge by extending him the benefit of doubt." (Emphasis added).*

v. *Muhammad Aslam* ***versus*** *The State* **(2011 SCMR 820)**

"It is well settled legal principle regarding dispensation of justice in criminal case that ***if any reasonable doubt is created in the case of the prosecution then its benefit is to be extended to the accused party****".*

vi. Reliance is also placed on the case titled as *Tariq Pervaiz* ***versus*** *The State* (**1995 SCMR 1345**).

25. In view of the foregoing, this criminal appeal is **allowed**. The impugned judgment dated 18.01.2023, passed by the Additional Sessions Judge, Islamabad (West), whereby appellant has been convicted and sentenced, is **set aside**. The appellant is acquitted of all the charges in case FIR No. 8/22, dated 20.04.2022, offences under sections 302, 353, 186, 34 of PPC, registered at police station CTD, Islamabad. The jail authorities shall release the appellant forthwith if his custody is not required in any other case.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in Open Court on this 29th day of **July**, 2024.

JUDGE

Ahmed Sheikh

Approved for Reporting.