

HCJDA-38
JUDGMENT SHEET

IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

1. (Murder Reference No. 17 of 2018)

2. (Criminal Appeal No. 117-J of 2018)
(Mst. Ramzana Bibi vs. the State & another)

3. (Criminal Appeal No. 96-J of 2018)
(Muhammad Ashraf @ Anwar Sayyal & another vs. The State & another)

4. (Criminal Revision No. 84 of 2018)
(Inayat Ali vs. The State & another)

J U D G M E N T

<u>Date of Hearing:</u>	13.12.2021
<u>Appellants by:</u>	Prince Rehan Iftikhar Sheikh, Mr. Mudassar Altaf Qureshi and Mr. Mehr Muhammad Akram Bangrath Advocates
<u>State by:</u>	Malik Riaz Ahmad Saghla Additional Prosecutor General
<u>Complainant by:</u>	Ch. Zafar Ullah Khan Warraich and Malik Allah Nawaz Channar Advocates

Sohail Nasir, J. By way of this single judgment Murder Reference (*17 of 2018*) submitted in terms of Section 374 Cr.P.C¹, Criminal Appeal (*117-J of 2018*) filed by Ramzana Bibi (*appellant*), Criminal Appeal (*96-J of 2018*) instituted by Muhammad Ashraf alias Anwar Sayyal and Allah Ditta (*appellants*) as well as Criminal Revision (*84 of 2018*) brought by Inayat Ali (*complainant*) are being decided together as arise out from judgment dated 30.01.2018 passed by the learned Additional Sessions Judge district Vehari on the basis of which appellants were convicted and sentenced as under: -

Allah Ditta and
Muhammad Ashraf alias Anwar Sayyal

¹ Code of Criminal Procedure, 1908

Under Section 302 (b) PPC² to death penalty as Tazir each (on two counts) with direction to pay Rs.400000/- (four lacs) each as compensation in terms of Section 544-A Cr.P.C to the legal heirs of each deceased and in default thereof to further undergo six months simple imprisonment each.

Mst. Ramzana Bibi

Under Section 302(b) PPC to imprisonment for life (on two counts) with direction to pay Rs.400000/- (four lacs) as compensation in terms of Section 544-A Cr.P.C to the legal heirs of deceased and in default thereof to further undergo six months simple imprisonment.

2. The convictions are outcome of case FIR³ No. 500 (PA) recorded on 13.11.2015 under Sections 302/337-J/34 PPC at Police Station Machiwal district Vehari on the complaint of Inayat Ali (Pw-11) for the allegations of commission of 'Qatal-e-Amd⁴' of Ameera Bibi and Munir Ahmad.

3. Facts of the case are that Abdul Sattar SI⁵ on receipt of information of the occurrence arrived at Chak⁶ No. 555/EB, where he recorded the statement (PO) of Inayat Ali who maintained that he was the resident of district Lodhran; his sister Ameera Bibi (deceased) along with her son Munir Ahmad (deceased) and others used to reside at Ittifaq Control Shed situated at Chak No. 555/EB; his nephew Munir Ahmad was a Supervisor in Ittifaq Control Shed; on 12.11.2015 he/complainant along with his brother Muhammad Ashraf (Pw-12) and Amjad Ali (not produced) came to the house of their sister Ameera Bibi; after having meal, Munir Ahmad got them slept in a room that was adjacent to main gate; it was about 12:15 AM (midnight) of 13.11.2015 when they/complainant etc. on hearing of firing

² Pakistan Penal Code (XLV of 1860)

³ First Information Report

⁴ Murder

⁵ Sub Inspector

⁶ Part of village

awoke up and came out of the room; they saw two persons, one with long height and slim physique and other with mid height wearing ‘*Shalwar Qameez*⁷’ having a pistol with him; both assailants after scaling over the wall went outside the Shed, however, they were able to identify them; they/complainant etc. went into the residential room of Munir Ahmad where they found that on the way adjacent to generator room two iron boxes and a repeater 12-bore were lying; when they entered in the courtyard of Munir Ahmad, they saw Ramzana Bibi (*appellant*) who started weeping and maintained that unknown assailants had committed the murder of Ameera Bibi and Munir Ahmad by way of firing; inside the room, dead bodies of Munir Ahmad and Ameera Bibi in pool of blood were also lying; they/complainant etc. felt suspicion and inquired from Ramzana Bibi who after one pretext or the other admitted that she had administered the tablets in the tea to Ameera Bibi and Munir Ahmad and then got committed their murder through Allah Ditta and Muhammad Ashraf alias Anwar Sayyal (*appellants*) because she wanted to marry with Anwar Sayyal; after a short while, getting the chance, Ramzana Bibi had escaped from there.

4. An endorsement was made by Abdul Sattar SI on the above said statement, who sent it to police station through Akram Jamil Constable on the basis of which FIR was recorded by Farzand Ali HC⁸ (*Pw-1*).

5. The case was investigated by Muhammad Afzal Inspector (*Pw-14*) who arrested Ramzana Bibi on 17.11.2015 as she was produced by Muhammad Naeem the owner of the Control Shed where the occurrence had taken place. He also arrested Muhammad Ashraf and Allah Ditta on 03.12.2015. They were sent to Jail for identification parade that took place on 10.12.2015 under the supervision of Muhammad

⁷ Man wearing

⁸ Head Constable

Imran Tariq Magistrate (**Pw-10**) where both were identified by the witnesses.

6. On conclusion of investigation report under Section 173 Cr.P.C (**Challan**) was submitted in court.

7. A charge under Sections 302/337-J/34 PPC was framed against appellants on 25.11.2016 for which they pleaded not guilty and demanded their trial.

8. In support its case prosecution had produced Farzand Ali HC/Moharrar⁹ the author of FIR (**Pw-1**), Muhammad Amin Abid SI (**Pw-2**), Muhammad Akmal Constable (**Pw-3**), Muhammad Aslam HC (**Pw-4**), Muhammad Javed Iqbal SI (**Pw-5**), Dr. Muhammad Amin (**Pw-6**), Raja Usman Yousaf draftsman (**Pw-7**), Muhammad Yasin Constable (**Pw-8**) Dr. Shawana Ambreen (**Pw-9**), Mr. Muhammad Imran Tariq Magistrate (**Pw-10**), Inayat Ali/complainant (**Pw-11**), Muhammad Ashraf/eye witness (**Pw-12**), Bagh Ali (**Pw-13**) and Muhammad Afzal Inspector/Investigating officer (**Pw-14**).

9. Amjad Ali and Muhammad Iqbal were given up being unnecessary by the learned DDPP¹⁰ who after producing the expert reports (**PAA to PAE**) had closed the prosecutions' evidence.

10. Initially all the appellants were examined under Section 342 Cr.P.C on 12.07.2017 but as thereafter more evidence was produced, so they were again examined by the learned trial court on 08.11.2017.

11. All the appellants denied incriminating evidences put to them and their versions were as under: -

Muhammad Ashraf alias Anwar Sayyal

"All the PWs are related inter se. I am a landless poor married man having three kids and a wife and old ailing father living at Singhpura Pakpattan. I was arrested by the

⁹ Diarist of Police Station

¹⁰ Deputy District Public Prosecutor

police on the second day of this occurrence along with some three persons but they were let off after receiving some consideration. My pelvic bone of my left leg has been broken and I cannot run and climb over the wall as alleged by the prosecution. It was a blind murder and so many people were formally taken into custody and I was made a scapegoat as I was a helpless man”

Allah Ditta

“As I have stated while replying question No.10, this false and fabricated case was registered against me by the complainant and PWs when I refused to join them as a PW, they have roped me in this case. I have neither any enmity, motive and ill will against the deceased nor I had any association or relationship with my co-accused Muhammad Ashraf alias Anwar Sayyal. Other employees who were present in Control Shed at the time of occurrence did not support the version of the complainant and no independent witness of the vicinity verified the prosecution story. The complainant and PWs are related inter se and they have deposed falsely against me”

Mst. Ramzana Bibi

“The PWs and complainant are related inter se and are inimical towards me. I and deceased Munir Ahmad had a love marriage against the wishes of complainant and the PWs who are close relative of Munir Ahmad deceased at Lodhran. Due to their annoyance I and Munir Ahmad shifted to Machiwal and started living there and I was living peaceful life with Munir Ahmad and his mother and three kids were born out of that wedlock. On the day of occurrence I was not present at Machiwal at my residence. A day prior to the occurrence I and my kids had gone to Lodhran to see my old ailing mother and I was there when I learnt about this sad incident. From there I rushed to P.S Machiwal along with my kids where police detained me at police station Machiwal and my kids were handed over to complainant party. Few months prior to the occurrence my husband Munir Ahmad disposed of his house situated at Lodhran for consideration of more than Rs.470000/.

The complainant party involved me in this case and took away more than Rs.470000/- and my other ornaments and they involved me in this case to grab the money and property of my husband and to take kids from me due to grudge of my love marriage with Munir Ahmad deceased. They were not on visiting terms with us and they never came to Machiwal in life time of Munir Ahmad deceased”

12. All the appellants did not opt to appear in terms of Section 340(2) Cr.P.C. Ramzana Bibi also did not desire to produce defence evidence, however, male appellants consented to do so and for that they brought on record certain documents (*DA to DG*).

13. All learned counsel for appellants jointly contended that this is the fundamental duty of prosecution to prove its’ case beyond reasonable doubt and in failure to do so accused deserves for acquittal as a matter of right; to discharge its’ duty prosecution cannot take any benefit from weakness of defence; murder of two persons will not be a sole consideration to send the culprits behind the gallows because under all circumstances prosecution cannot escape from its’ liability to stand on its own legs; Inayat Ali (*Pw-11*) and Muhammad Ashraf (*Pw-12*) both are the chance witnesses as they could not furnish any explanation for their presence at crime scene; so-called extra judicial confession of Ramzana Bibi does not appeal to mind which even otherwise is not supported from circumstances; how was it possible for Ramzana Bibi to escape in presence of many persons present at crime scene; no source of light was introduced by the witnesses so the question of looking the faces of Muhammad Ashraf and Allah Ditta does not arise; features of any of the male appellants have not been provided therefore, identification parade is of no worth; if the statement/extra judicial confession of Ramzana Bibi (*appellant*) does not remain in field, entire prosecutions’ evidence including

identification parade proceedings shall fall on the ground; reports of PFSA showing the matching of pistol of Muhammad Ashraf (*appellant*) with empties recovered from crime scene and DNA of buckle swabs shall also lose their credibility if other pieces of evidence are disbelieved because these reports at the most are corroborative and not conclusive in nature. All learned counsel has ultimately demanded the acquittal for their clients.

14. On the other hand, both learned counsel for complainant and learned APG¹¹ jointly argued that both the eye witnesses categorically maintained that they had come to place of occurrence to see their sister and once they gave logical reason they were no more chance witnesses; they witnessed two assailants while scaling over the wall so they were able to see their faces and on the basis thereof it was quite easy for them to remember the features and then to identify the male appellants during identification parade proceedings; escape of Ramzana Bibi from crime scene is not an abnormality, therefore, shall give no benefit to any of the male appellants; it was immediately after the occurrence when Ramzana Bibi disclosed about the names of male appellants who were also nominated in FIR that was based on prompt information received by police; medical evidence, recoveries and expert reports stand in corroboration to the ocular account; no enmity whatsoever exists between two sides therefore, question of false involvement of any of the appellants does not arise; statements of witnesses are not suffering from any contradiction or infirmity hence cannot be discarded; during cross-examination defence was not successful to shatter the credibility of any of the witnesses. All have finally contended that all the appellants have been rightly convicted by the learned trial court on the basis of a well reasoned judgment.

¹¹ Additional Prosecutor General

15. Learned counsel for complainant further added that as Ramzana Bibi is the principal convict therefore her sentence is liable to be enhanced from life imprisonment to death penalty.

16. **HEARD**

17. Prosecutions' story is based on the disclosure of Ramzana Bibi (*appellant*) that she, at crime scene, stated that she had given sleeping pills to Ameera Bibi and Munir Ahmad and then she invited male appellants for the murder of both of them. Had there been no revelation of Ramzana Bibi in the field, it had to be a mystery that who were the persons escaped from crime scene? Statement of Ramzana Bibi which has been claimed as an extra judicial confession has been found factually incorrect. The reports of PFSA (*PAC and PAB*) show that the internal organs/stomach and liver contents of both the deceased were sent to expert for detection of drug or poison, however, according to these reports there was no drug or poison detected in any of the said organs.

18. It was the month of November when occurrence took place at about 12:15 am. In this month even in this part of the country almost winter starts. On coming to know about firing not only two witnesses but other persons also arrived at crime scene. After Ramzana Bibi made disclosure about the crime, there was no occasion at all for her to escape from that place in presence of considerable number of persons. Simply to say that she by getting the chance was succeeded to run is not acceptable to a prudent mind in particular when none of the eye witnesses ever maintained that they tried to chase the lady and to apprehend her?

19. Prosecution had claimed that Ramzana Bibi, on 17.11.2015, was produced by Muhammad Naeem the owner of the Shed. He was not examined by the investigating officer during the entire investigation. In the given

circumstances, he was an important witness and by not joining him in the investigation in fact prosecution is responsible for withholding the best available evidence. So this fact too has caused serious damage to the prosecutions' case.

20. Inayat Ali (Pw-11) and Muhammad Ashraf (Pw-12) are real brothers as well as real brothers of Ameera Bibi one of the deceased. In cross-examination Inayat Ali categorically admitted that he was not the resident of that locality. The relevant answers given by him were as under: -

“My residence from place of occurrence is about 60 miles. Volunteered that my residence and that of other Pws is 150 miles from place of occurrence the residence of Muhammad Ashraf Pw is at a distance of 1 or 1½ kilometers from my residence towards East”

21. In view of above specific replies, Inayat Ali and Muhammad Ashraf both were the chance witnesses. A chance witness is the one who, if by coincidence or chance, happens to be at the place of occurrence at the time it is taking place and who in ordinary circumstances has to be not at a place where he claims but is to be at his ordinary venue. The evidence of a chance witness requires very cautious and close scrutiny. He must adequately explain his presence at the crime scene. In case of a chance witness, the prosecution is burdened to show that what were those special reasons that instead to be at his ordinary place he was present at a point where he was not supposed to be? If the reasons are sound, convincing, logical and corroborated from other circumstances, the statement of a chance witness can be accepted otherwise not¹².

¹² Muhammad Rafique vs. The State 2014 SCMR 1698, Usman alias Kaloo vs. The State 2017 SCMR 622, Javed Ahmad vs. State, 1978 SCMR 114, Zafar Hayat vs. State, 1995 SCMR 896, Muhammad Rafique vs. State 2004 SCMR 755, Muhammad Khalid vs. Abdullah, 2008 SCMR 158, Sughra Begum vs. Qaiser Pervez, 2015 SCMR 1142 and Ibrar Hussain v. State, 2020 SCMR 1850.

22. No doubt that Ameera Bibi (*deceased*) was the real sister of both the eye witnesses but the fact remains that what were those extraordinary circumstances that on 12.11.2015 both of them came there? When Inayat Ali (*Pw-11*) was questioned in this regard he replied as under: -

“There was no special occasion of our visit to the place of occurrence. We just came there to see Munir Ahmad and Ameera Bibi”

23. Similarly Muhammad Ashraf (*Pw-12*) in cross examination responded as under: -

“There was no special occasion for which we visited at the house of Munir Ahmad deceased”

24. To travel from a distance of about 150 miles by two real brothers without any specific reason exactly on the same day when on the following night occurrence took place, speaks about some foul play in the prosecutions’ story hence their credibility has lost the worth and they cannot be believed.

25. Both the witnesses were also in contradiction when Inayat Ali maintained that they had planned two days earlier for their visit whereas, Muhammad Ashraf responded that they made a plan about 4/5 days ago.

26. Another important fact in this case is that Muhammad Ashraf (*appellant*) used to limp as admitted by the witnesses. The wall of the house where occurrence took place was six feet in height so how was it possible for him to scale over the wall and to escape? In this context it was stated that on one side of the wall there was small heap of garbage or some bricks which might have been used by Muhammad Ashraf. Even if this was the position, it was difficult for a person who was having disability in his leg to climb and to scale over the wall.

27. Occurrence as claimed by prosecution took place at about 12:15 midnight approximately. Statements of both the eye witnesses do not show that there was any source of light available at crime scene and this fact was also admitted by Muhammad Afzal Inspector (*Pw-14*) that throughout the investigation no source was shown for conceiving the features of male appellants by the alleged eye witnesses.

28. For the sake of arguments if it is considered that both the witnesses had seen the male appellants, the question shall remain, whether they were in a position to see their faces while they were running from crime scene? It was not their case that they and male appellants came across to each other when assailants were escaping. Muhammad Ashraf (*Pw-12*) made an important reply in this context which was as under: -

“The accused persons at the time of departure were running from West to East at the distance of 5/6 karams from us”

29. What both the witnesses had seen and what they conceived was that, one of the accused was with long height and slim physique and other was with mid height. These features under no circumstance can be stated to be the relevant glimpse on the basis of which the witnesses were in a position to identify the male appellants during the identification parade proceedings.

30. To ensure a reliable identification parade prosecution must prove also that the witnesses were able to see the accused first time at crime scene and then during the proceedings of identification parade. Prosecution is also under obligation to establish that during the intervening period there was no occasion or possibility or chance of exposure of identity of accused.

31. Muhammad Afzal Inspector (*Pw-14*) in cross examination admitted that when male appellants were

produced before the learned Area Magistrate on 03.12.2015 for their judicial with the purpose of identification parade, he did not mention in the application that they were muffled faces. He also conceded that even in the order dated 03.12.2015 passed by the learned Magistrate there was mention that male appellants had covered their faces.

32. Even otherwise we have observed that no safe reliance can be placed on the identification parade proceedings because it was the case of prosecution that immediately after the male appellants were escaped, Ramzana Bibi (*appellant*) had disclosed their names. She also disclosed the fathers' name of Allah Ditta as well as his address. In these circumstances before male appellants were arrested on 03.12.2015 there was every possibility for the witnesses to see them and in this backdrop the identification parade proceedings are of no value for the prosecution.

33. Mr. Muhammad Imran Tariq Magistrate (*Pw-10*) had supervised the identification parade inside the Jail. This is undeniable proposition that identification parade is a relevant fact under Article 22 of the Qanoon-e-Shahadat, Order 1984; it is not a requirement of law but only one of the methods to test the veracity of the evidence of an eye witness who had an occasion to see the accused and claims to identify him; the evidence offered through identification proceedings is not a substantive piece of evidence but is only corroborative of the evidence given by the witnesses at the trial; it has no independent value of its own and cannot as a rule, form a sufficient basis for conviction though the same may add some weight to the other evidence available on record and that it is also not a rule of law but a rule of prudence.

34. This too is not disputed that the identification parade is governed by Volume III, Chapter 11-G, Part-C of the Rules and Orders of the Lahore High Court, Lahore and

paragraph No. 26.32, Chapter XXVI of the Police Rules, 1934 and various instructions issued by the Government. The important features for a valid identification parade are that the proceedings shall be conducted under the supervision of a Magistrate; proceedings shall be held inside the jail; identification shall be carried as soon as possible after the arrest of suspect; once the arrangements for proceedings have been undertaken, the Officer investigating the case and any Police Officer assisting him in that investigation should have no access whatever either to the suspect or to the witnesses; list of all persons included in identification should be prepared, which should contain their names, parentage, address and occupation; the suspects shall be placed among other persons similarly dressed up, of the same religion and of same social status; there shall be proportion of 8 or 9 such persons to one suspect; the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called upon to make identification; each witness shall be brought up separately to attempt his identification; care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communication to pass between witnesses who have been called up and those who have not; 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 someone depends only upon his vigilance and caution and that he is required to record in his report all the precautions taken by him for a fair conduct of the proceedings¹³.

¹³ Muhammad Bashir vs. The State PLD 1958 SC 1; Muhammad Afzal & another vs. The State 1982 SCMR 129; Criminal Appeal No. 1240-J of 2017 Muhammad Ijaz & another versus. The State decided on 24.11.2019 (<https://sys.lhc.gov.pk/appjudgments/2021LHC7190.pdf>)

35. The identification parade proceedings (*PN*) show that only the names and parentage of the dummies were recorded. It does not indicate their ages, religion or caste. Even this report does not show that male appellants and dummies were having similarity. We have also observed that Muhammad Ashraf one of the male appellants was a person who admittedly used to limb. The report is completely silent that if the said disability of Muhammad Ashraf remained unexposed during the entire proceedings.

36. We, therefore, conclude that Inayat Ali and Muhammad Ashraf the alleged eye witnesses were not present at crime venue and in fact it was an unseen occurrence. For this reason also we declare that the evidence of identification parade cannot be relied upon.

37. Coming to the medical evidence it does not require any detailed discussion about injuries on the persons of two deceased because their death by way of firearm injuries have not been disputed by appellants however, the post mortem reports have negated the version of prosecution that it was a promptly lodged FIR. Admittedly, the complaint (*PO*) was completed at 02:45 am and according to Muhammad Afzal Inspector the dead bodies were sent to hospital at about 08:00/09:00 am. This position cannot be acceptable to a mind that if at 02:45 am the complaint was completed then why almost more than four hours were consumed for the preparation of documents. Even if it is ignored, how prosecution will answer the fact which was disclosed by Dr. Muhammad Amin (*Pw-6*) that after receiving the complete documents from police, he conducted the post mortem examination at 12:15 pm? How prosecution can respond when said doctor answered in cross-examination that before 11:30 am neither the dead body of Munir Ahmad was received in hospital nor the relevant documents were given to him? How the prosecution will come out from the

challenge thrown by its own witness Dr. Shawana Ambreen (Pw-9) who maintained that she received the dead body of Ameera Bibi along with complete documents at 04:00 pm on 15.11.2015 and in cross-examination she reaffirmed that before 03:30 pm neither the dead body nor the relevant documents were produced before her?

38. The delayed post mortem examination and delayed receipt of dead bodies and the relevant documents are the strong reasons to hold that prosecution's case is doubtful¹⁴. So we declare further that the occurrence did not take place in the manners as alleged by the so-called eye witnesses of the case.

39. Prosecution is forcefully relying on the positive report of PFSA (PAA) that shows that the empties were fired from the pistol recovered at the instance of Muhammad Ashraf (*appellant*). Prosecution has also claimed that from the crime scene spit was taken into possession which later on matched with the buckle swabs of Muhammad Ashraf as evident from the report of PFSA (PAE).

40. So far as positive report of firearm expert is concerned, this proposition has already been settled that if ocular account of the case is disbelieved, such report being corroborative in nature cannot be used as substantive piece of evidence for the purpose of conviction¹⁵.

41. No doubt that the DNA report has to be considered as a strongest corroborative evidence but at the same time it too has been settled that usefulness of DNA analysis depends mostly on the skill, ability and integrity shown by the Investigating Officers who are to first arrive at the scene of crime and that unless the evidence is properly documented, collected, packaged and preserved, it will not meet the legal

¹⁴ Khalid alias Khalidi & 2 others vs. The State 2012 SCMR 327, Mina Sohail Ahmad & others vs. The State & others 2019 SCMR 956 and Irshad Ahmed vs. the State 2011 SCMR 1190

¹⁵ Naveed Asghar & 2 others vs. The State PLD 2021 SC 600

and scientific requirements for admissibility into a court of law¹⁶.

42. In the case in hand there was delay of 13 days for sending the spit to the Office of PFSA which has not been explained. The memo (*PU*) also does not show that what the precautions and measures were adopted by the Investigating Officer while collecting, packaging and preserving the spit? We find that in view of the principles settled by the apex Court, it is also the duty of prosecution to prove that material/evidence was properly collected, packaged and preserved and if it is not so, the DNA shall not meet the legal and scientific requirements for admissibility.

43. Muhammad Ashraf (*appellant*) to the question No.9 about the collection of spit from crime scene had replied as under: -

“The police arrested me on the second day of occurrence and Investigating Officer took spit from me at police station Machiwal and that he has not shown my formal arrest. Later on he showed my formal arrest and in this way he maneuvered this fabricated and false evidence against me”

44. Even during identification parade proceedings (*PA*) when learned Magistrate asked from male appellants about any objection, they categorically replied that they were kept at Police Station for about 20 days.

45. When ocular account and identification proceedings have been disbelieved; when it has also been held that medical evidence has not corroborated the prosecutions’ story and when it is too established on the record that police got the names of male appellants on the same day, the version of Muhammad Ashraf in his examination made under Section 342 Cr.P.C as well as before the learned

¹⁶ Ali Haider @ Pappu vs. Jameel Hussain & others PLD 2021 SC 362

Magistrate during identification parade proceedings has got the worth. Therefore it can be safely held that evidence of spit has been fabricated in the way as claimed by Muhammad Ashraf (*appellant*).

46. We cannot keep out of sight the principles that it is the duty of prosecution to stand on its own legs and to prove the case beyond reasonable doubt¹⁷ whereas, in this case the said duty has not been discharged successfully hence the benefit shall go to appellants¹⁸ as a matter of right and privilege.

47. We therefore, allow both the criminal appeals, set aside the impugned judgment and acquit all the appellants from this case. They are in custody and shall be released forthwith if not required in any other case. The case property shall be dealt with in the same manners as directed by the learned trial court.

48. The criminal revision filed by complainant in above circumstances is dismissed.

49. The death sentences awarded to male appellants are NOT CONFIRMED and Murder Reference is answered in NEGATIVE.

(Ahmad Nadeem Arshad)
Judge

(Sohail Nasir)
Judge

Approved for Reporting

(Judge)

Afzaal

¹⁷ Rehmat alias Rhaman alias Waryam alias Badshah vs. The State PLD 1977 SC 515, Nasrullah alias Nasro vs. The State 2017 SCMR 724 and Abdul Majeed vs. the State 2011 SCMR 941

¹⁸ Muhammad Mansha vs. The State 2018 SCMR 772, Muhammad Akram vs. The State 2009 SCMR 230 and Muhammad Imran vs. The State 2020 SCMR 857