

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.A. No.01-D/2022 with
Cr.Mis.No.01-D/2022.

Muhammad Noman & another.
Vs.
The State etc.

JUDGMENT

For Appellant: M/S Muhammad Yousaf Khan and
Javed Khan Kundi, Advocates.

For State: Mr. Rehmatullah, Asstt: A.G.

For Respondent: Mr. Inamullah Khan Kundi,
Advocate.

Date of hearing: 28.9.2022.

MUHAMMAD FAHEEM WALI, J.- This appeal is directed against the judgment dated 07.12.2021, rendered by learned Judge, Anti-Terrorism Court, D.I.Khan, whereby the appellants, after facing trial in case FIR No.310 dated 14.7.2021, under sections 365-A, 387, 382, 411/34 PPC read with section 15 Arms Act, of police station SMA, Tank, have been convicted and sentenced as under:-

- (i) Under section 365-A PPC, to rigorous imprisonment for life;
- (ii) Under Section 392 PPC, to seven years R.I. with fine of Rs.20,000/- or in default thereof, to suffer two months simple imprisonment; and
- (iii) Under Section 15 Arms Act, to three years R.I.

All the sentences have been ordered to run concurrently. However, section 387 PPC has been deleted.

2. The prosecution story as unfolded in the FIR, registered on the basis of *murasila*, in brief, is that on 14.7.2021 at 6:45 hours, complainant Habib Ullah (PW-2), reported on the spot to Sajid Ahmad Khan SHO of police station SMA, Tank, to the effect that on 13.7.2021, he alongwith Muhammad Faraz (PW-2), owner of truck bearing registration No.C/1399, Rahimullah (abandoned PW) and Javed Ullah (PW-8) were proceeding to Peshawar from Ladha in the said truck loaded with woods and at about 23:30 hours, when they reached to the spot, three muffled face persons, duly armed with pistols and Kalashnikov were standing on roadside, who signaled them to stop, whereupon due to fear they stopped the truck and were boarded therefrom; that the accused searched them and took away Rs.60,000/- from him, Rs.1500/- from Javed and a mobile phone having SIM No.03348821774 and also kidnapped Muhammad Faraz by demanding Rs.1,00,000/- as ransom. He charged unknown accused for the commission of offence. Subsequently, during course of investigation, statement of the alleged abductee was recorded under section 161, Cr.P.C. where he charged unknown accused with their identification marks and

descriptions, however, he charged the convict/ appellants during identifications parades conducted by Illaqa Magistrate (PW-10) in Central Jail D.I.Khan and Sub Jail, Tank.


3. On completion of the investigation, complete challan against the appellants was submitted before the learned trial Court where at the commencement of trial, the prosecution produced and examined as many as ten witnesses, whereafter, statements of the accused under section 342 Cr.P.C, were recorded wherein they professed innocence and false implication, however, neither they wished to be examined on oath in terms of section 340(2) Cr.P.C, nor, opted to produce defence evidence. On conclusion of trial, learned trial Court, vide impugned judgment, convicted the appellants and sentenced them, as mentioned above, hence, the instant criminal appeal.

4. It is pertinent to mention here that the appellants have filed Cr.M.No.01-D of 2022, seeking condonation of delay caused in filing the appeal, as the impugned judgment was passed on 07.12.2021, whereas the appeal was filed on 04.01.2022. Under the Anti-Terrorism Act, an appeal against conviction is to be filed by a convict within fifteen days, however, in view of the contents of application, same

is allowed and the delay caused in filing the appeal is condoned.

5. We have heard the learned counsel representing the appellants, the learned State Counsel assisted by learned private counsel at length and with their valuable assistance, the record was scanned.

6. Although the learned trial Court after appraisal of evidence has recorded judgment of conviction, however, this being appellate Court, is under legal obligation to re-assess the already assessed evidence in order to determine that whether the prosecution successfully proved its case against the appellants beyond any reasonable doubt and as to whether the occurrence had taken place in the mode and manner as portrayed by the prosecution.



7. Scanning of the record reveals that the occurrence in the present case allegedly occurred on 13.7.2021 at 23:30 hours at Tank-Jandola road near Custom Pump, whereas the matter was reported by the complainant PW-2 on 14.7.2021 at 6:45 hours, which is belied by the complainant himself in his cross examination where he stated that after the occurrence he reached to the police station in one hour as the police station was already known to him. The prosecution produced and examined the complainant, the alleged abductee Muhammad Faraz and their companion Javed Ullah as PW-2, PW-3

and PW-8, respectively, however, they admitted in unequivocal terms that at the time of occurrence the accused were muffled face.

8. The first question for determination is identification parade of the accused conducted by Judicial Magistrate (PW-9) in Sub-Jail Tank and Central Prison, D.I.Khan, wherein the alleged abductee Muhammad Faraz (PW-3) allegedly identified the appellants. There is no denial of the fact that the occurrence occurred at night time and at the time of occurrence the accused were muffled face, however, no features of the accused have been mentioned in the FIR. As per prosecution version, the abductee was allegedly released by the accused on 16.7.2021, whereafter, he came to police station where his statement under Section 161, Cr.P.C. was recorded wherein he charged the accused by mentioning their identification marks and descriptions. Now the question arises that when the accused had muffled their faces at the time of occurrence, then subsequently how they could be identified by the alleged abductee during identification parade conducted with a delay of almost twenty days. Moreover, prior to holding the identification parade, the appellants were produced before the learned Judge Anti-Terrorism Court, D.I.Khan on 23.7.2021, 24.7.2021 and 28.7.2021,



therefore, the possibility of disclosing their appearance to the identifier could not be ruled out. In such view of the matter, no importance could be attached to the identification parade. Besides, the identifier did not point out the specific role played by the appellants in the crime. It is by now well settled that in order to make an identification parade reliable, the identifier must assign the specific role, which each of the perpetrator has played in the crime. As the identification parade is silent on the ibid aspect and had taken place at a belated stage of the appellants' arrest, therefore, no explicit reliance could be placed thereupon for the safe administration of justice.

The Honourable Supreme Court of Pakistan in a case reported as "Noor Islam Vs. Ghani-ur-Rehman and another" (2020 SCMR 310) has held that:-

"In this case, the police arrested several suspects and the only piece of evidence on which the two foras below relied, is the identification parade, conducted in the Central Jail where the appellant was identified however, beside being the weakest piece of evidence it loses its judicial efficacy because the face feature complexion etc. were not given in the report".

In case reported as "Mian Sohail Ahmed and others Vs. The State others" (2019 SCMR 956), it has been held that:-

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).*

8.

In view of case law referred to above, the alleged identification parade has lost its evidentiary

value, which could not be relied upon for sustaining conviction.

9. The second question for determination is recovery of pair of Chappal which was allegedly given to the abductee by the accused and has been made the basis for awarding conviction to the appellants by learned trial Court. At this stage, learned counsel for the appellants submitted that such type of recovery could not be made the basis for awarding conviction, as the same could easily be made available from the open market. He further submitted that no identification parade of the Chappel was conducted through the alleged abductee, therefore, it has lost its evidentiary value. Although shopkeeper appeared before the Court as PW-1 and stated that said pair of chappel was purchased by accused Muhammad Noman on 16.7.2021 @ Rs.450/-, however, same could not be made the basis for awarding sentence to the appellants for the reason that such type chappel are easily available in open market, especially when no identification of the same has been conducted through the alleged abductee.



10. Besides the above, none from the locality where the abductee was allegedly confined in a house, was cited as witness to confirm that after the occurrence till his release by the accused, they had seen the abductee in the company of appellants. Although the Investigating Officer while appearing before the Court as PW-9, during cross examination stated that the house where the abductee was confined was owned by one Sultan Masood, however, said Sultan Masood has not been cited as witness to confirm that the abductee was confined in the house owned by him. PW-9 further admitted that he had not recorded statement of anyone to confirm the factum of roaming around of the accused near the house where the abductee was confined. In this view of the matter, when no independent evidence is available on file to corroborate the statements of alleged abductee and the Investigating Officer, it could hardly be believed that the appellants were involved in the commission of offence.

11. The overall impact of what has been discussed above is that the prosecution has miserably failed to establish the case against the appellants, otherwise to extend benefit of doubt so

many circumstances are not required to be brought forth. In this regard, guidance has been sought from a judgment reported as Tariq Pervez v. The State (1995 SCMR 1345), wherein it has been held that, "The concept of benefit of doubt to any accused person is deep rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right". The instant criminal appeal is, therefore, allowed, the impugned judgment is set aside, the appellants are acquitted of the charges levelled against them. They shall be released forthwith, if not required to be detained in connection with any other case.

12. Above are the detailed reasons of our short order of even date.

Announced.
Dt: 28.9.2022.
(Kifayat/PS*)


JUDGE


JUDGE

(D.B)
Hon'ble Mr. Justice Muhammad Faheem Wali
Hon'ble Mr. Justice Shahid Khan

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