

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial

Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition Nos.574 & 575 of 2019**

*(Against judgment dated 7.3.2019 passed by the  
Islamabad High Court Islamabad in Crl. Appeal  
Nos.204 of 2015 & 02 of 2017)*

***Tasar Mehmood***

*(in Crl.P. 574/2019)*

***Shahbaz Ahmed***

*(in Crl.P. 575/2019)*

...Petitioner(s)

**Versus**

***The State & others***

*(in C.P. 574/2019)*

***The State***

*(in C.P. 575/2019)*

...Respondent(s)

For the Petitioner(s):

Mr. Tariq Mehmood Abbasi, ASC

*(in both cases)*

Syed Rifaqat Hussain Shah, AOR

For the State:

Mr. Niazullah Niazi,

Advocate General, I.C.T.

along with Mubarak SHO Shahzad Town,  
Azhar, SI/I.O.

Date of hearing:

05.05.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Tasar Mehmood and Shahbaz Ahmed, petitioners, along with two others trespassed into a private hospital managed by Dr. Yousaf Ali (PW-11), located within the limits of Police Station Shahzad Town Islamabad to commit robbery on 26.11.2013 at 9:45 p.m; as the attendants on the reception resisted the intruders, they opened indiscriminate fire; Zahid Ali Khan (PW-10) survived the solitary gunshot, however, a comrade in crime, identified as Umair Shahzad fatally fell in the line of fire; in the wake of

anticlimax, they took to the heels along with the snatched articles. Information was laid with the police by the owner who resided upstairs in the same premises. Spot inspection includes seizure of human blood and casings as well as lead bullets, 28 in number, vide inventories of even date. As the investigation progressed, Tasar Mehmood, petitioner, was arrested on 6.2.2014 followed by Shahbaz Ahmed on 5.3.2014; they were identified by the injured in a test identification parade under a magisterial supervision held on 7.3.2014; subsequently, upon disclosures, they led to the recovery of pistols P-11 & P-7, forensically found wedded with the seized casings. Prosecution is clueless about the fourth accomplice till date. Petitioners were indicted for homicide as well as robbery before the learned Additional Sessions Judge-I (East) Islamabad; they claimed trial that resulted into their convictions vide judgment dated 28.11.2016; Tasar Mehmood petitioner was sentenced to imprisonment for life on both counts whereas Shahbaz Ahmed was acquitted from the charge of homicide, however, sentenced to imprisonment for life on coordinate charges with a direction to pay monetary compensation to the injured; they preferred appeals, during pendency whereof, the legal heirs of Umair Shahzad deceased compounded the offence of murder, in consequence whereof, Tasar Mehmood was acquitted from the said charge; the Islamabad High Court while maintaining remainder convictions reduced sentences of imprisonment for life to 10-years R.I. vide impugned judgment dated 7.3.2019, *vires* whereof, are being assailed by both the convicts through separate petitions, being decided through this single judgment.

2. It is argued that since the petitioners were not named in the crime report nor arrested at the spot, thus, there was no occasion for their conviction merely on the statement of a solitary witness who claimed to have identified them in a test identification parade, held in derogation to the principles/safeguards provided under the High Court Rules & Orders, otherwise inconsequential for lack of description of features as well as assignment of the roles respectively played by the culprits during the occurrence; absence of Mushtaq Hussain, Watchman, from the witness box has been referred to as a devastating blow to the credibility of prosecution case as, according to the learned counsel, his failure to testify would cast adverse inference within the contemplation of Article 129 (e) of the *Qanun-e-Shahadat Order*, 1984.

Mr. Niazullah Khan Niazi, learned Advocate General Islamabad Capital Territory faithfully defended the impugned judgment.

3. Heard. Record perused.

4. A promptitude intervened the events of fateful night; occurrence took place at 9:45 p.m., complaint is recorded 11:45 p.m. at the spot; Zahid Ali Khan (PW-10) is examined under a police docket in the Pakistan Institute of Medical Sciences; autopsy of the slain accomplice is carried out at 10:30 a.m. following day; none other than the deceased, identified through his CNIC, is arrayed by name in the crime report. Spot inspection confirmed the incident. Integrity of initial investigation is beyond doubt and it is through investigative process that the police reached out the petitioners; they were kept in judicial lock up and remitted into police custody only after they had been identified by the injured in the test identification parade. Weapons recovered pursuant to disclosures were forensically matched with the casings dispatched earlier than petitioners' arrest. These formidable pieces of evidence were relied upon by the trial court to unhesitatingly return a guilty verdict. Composition of murder of co-accused by Tasar Mehmood in the High Court has been nothing less than a last straw in the episode. In this backdrop, criticism of alleged flaws in the test identification parade sounds a far cry. Reference to omission of assailants' features and respective roles played by them during the occurrence is beside the point in circumstances. Article 22 of the Qanun-e-Shahadat Order, 1984 provides mechanics to enable the witnesses to establish identity of unacquainted assailants, a dilemma increasingly confronting prosecution in detection of culprits in expanded urban neighbourhoods. For convenience of reference, it is reproduced below:-

***"Facts necessary to explain or introduce relevant facts.—Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."***

Juridical wisdom, legislated with ingenious brevity *par excellence*, is nonetheless widely spaced to meet diverse situations as calamities seldom come about under ideal or identical circumstances; same applies to the responses by those who encounter such situations as crisis impacts differently upon individuals' faculties and nerves to sustain and endure themselves during the ordeal, therefore, it would be unrealistically inexpedient to apply dogmatic standards with empirical exactitude to settle the question of assailant's identity. There may be situations where witnesses are expected to be more expressive and descriptive but there may well be contra situations as well. The underlying purpose behind High Court Rules and Orders, Volume III, Part-C, based upon a circular issued by the Punjab Government way back on 19<sup>th</sup> of December, 1936 is primarily to ensure that the accused confronting the witnesses in a test identification exercise is least embarrassed or handicapped. Similarly, Rule 26.32 of the Police Rules, 1934, *inter alia*, provides as under:-

- (a) *"The proceedings shall be conducted in the presence of a magistrate or gazetted police officer, or, if the case is of great urgency and no such officer is available, in the presence of two or more respectable witnesses not interested in the case, who should be asked to satisfy themselves that the identification has been conducted under conditions precluding collusion."*

The survey of above provision of law renders it abundantly clear that the process of test identification parade has to be essentially carried out, having regard to the exigencies of each case, in a fair and non collusive manner, free from the taints of prejudice; a contra claim must rest upon evidential basis; the exercise is not an immutable ritual, inconsequential non performance whereof, may cause failure of prosecution case, otherwise structured upon clean and probable evidence. In the present case, the assailants surprised the witnesses and soon thereafter started snatching the valuables; upon resistance, one of them resorted to firing; a colleague fell to death on spot at the hands of his own accomplice and as such their identification by the witnesses constituted valid and reliable proof to drive home the charge beyond reasonable doubt. The complainant or the witnesses in their statements did not point out specific features and as such they were not required to improve upon their case during the test identification

parade. An effective regime of administration of criminal justice has to be pivoted on a balance, correlating fair trial for an accused with a meaningful opportunity to the prosecution to drive home the charge on the strength of available evidence. Since corporal consequences are irreversible and freedom once forfeited cannot be restored or recompensed with retrospect, the Court must insist for "*proof beyond doubt*" to rule out possibility of error or hypothesis of innocence, nonetheless, at the same time, prosecution cannot be saddled to come forward with details hyper technical, artificial or illusory. Indictment structured on macro foundations of truthful evidence can sustain the charge. Evidence comprising natural witnesses, with dead body of a co-accused, whose murder was subsequently compounded by no other than one of the petitioners himself squarely constitute proof beyond doubt. Absence of Mushtaq Hussain, Watchman from the witness box does not raise any adverse inference as the remainder of the witnesses were in place during the trial. Petitions fail. Leave declined.

**Judge**

**Judge**

Islamabad, the  
5<sup>th</sup> May, 2020  
Not approved for reporting  
Azmat/-