

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

**Criminal Appeal No. 282-L/2020 and Criminal
Petition 461-L/2015**

Against the order dated 02.02.2015 of the Lahore High Court,
Multan Bench passed in CrI.A. 39 of 2010-ATA, CrI. Rev. No. 405
of 2010-ATA and CSR. 08/2010

Rashid and others
(in CrI.A 282-L/2020)

...Appellant(s)/
Petitioner(s)

The State
(in CrI.Ps. 461-L/2015)

VERSUS

The State
(in CrI.A 282-L/2020)

Talha
(in CrI.P. 461-L/2015)

...Respondent(s)

For the Appellant(s): Ms. Ayesha Tasneem, ASC

For the State: Mr. Sajjad Hussain Bhatti, DPG

For the Complainant: Mr. Muhammad Usman, ASC

Date of Hearing: 18.02.2025

JUDGMENT

Irfan Saadat Khan, J.- Criminal Appeal No. 282-L/2020 & Cr.P.L.A 461-L/2015: Leave to appeal in the instant matter was granted *vide*: order dated 22.07.2020 in the following manner:

"Jail Petition No.128 of 2015: The instant jail petition has been filed by the convicts Rashid, Haider Ali and Naveed. Rashid was sentenced to death whereas Haider Ali and Naveed were sentenced to imprisonment for life by the learned trial Court. The learned High Court through the impugned judgement dismissed the criminal appeal filed by the petitioners and while answering the Capital Sentence Reference in the affirmative, maintained the death sentence of petitioner Rashid.

Therefore, in the larger interest of justice, leave to appeal is granted in the instant jail petition to reappraise entire evidence available on record for safe administration of justice.

Crl.P.No.461-L of 2015: *To be heard alongwith appeal arising out of connected jail petition.*

Crl.P.No.484-L of 2015: *To be heard alongwith the criminal appeal arising out of jail petition No.128 of 2015 and with connected Criminal Petition No.461-1 of 2015."*

This judgment seeks to dispose of the Criminal Appeal and Petition both arising out of the consolidated judgment passed by the Lahore High Court, Multan in i) Criminal Appeal No. 39 of 2010-ATA; ii) Crl. Revision No. 405 of 2010-ATA and; iii) Capital Sentence Reference No. 08 of 2010, all relating to the same incident reported by Atta-ul-Naeem (the "**Complainant**") in FIR No. 828/2009, dated 06.08.2009. In the trial that followed, the accused¹ were convicted and sentenced by the Anti-Terrorism Court, Multan ("**Trial Court**") vide: order dated 29.06.2010, which was impugned before the High Court in the aforementioned cases. The learned High Court decided the cases in the terms reproduced *infra*.

2. Briefly, the facts of the case, as narrated in FIR No. 828/2009 registered at Police Station New Multan on the statement of the Complainant, are that on 06.08.2009 at about 10:00 AM, the Complainant, an advocate, and his brother Atta-ul-Karim were returning home, after buying groceries from the market, accompanied by their friend Muzaffar Hussain, where they were confronted by 03 youths armed with pistols wearing *shalwar-qameez*. The youths had already confined the women and children present at the house in a room and were demanding jewellery and cash. Immediately upon seeing the Complainant, Atta-ul-Karim and Muzaffar Hussain, one of the youths opened fire hitting Atta-ul-Karim on the face and back; another youth opened fire and hit Muzaffar Hussain on the leg – both Atta-ul-Karim and Muzaffar Hussain fell to the floor injured.

¹ Rashid, Haider, Naveed and Talha.

The Complainant, while taking shelter behind a wall had raised hue and cry, which caused Rana Aamir Rizwan and Muhammad Ahmad to arrive, and both were eyewitnesses to the incident. The PWs did not try to venture near the youths out of fear while the accused persons opened retreating fire to flee from the scene. The injured were rushed to Nishtar Hospital Multan where Atta-ul-Karim succumbed to his injuries, while Muzaffar Hussain survived the assault. Subsequently, on 26.10.2009, the Complainant submitted an application to the SHO at Police Station, New Multan wherein he nominated Talha as an accused after PWs No. 11 & 12, namely Muhammad Shafi and Sajjad Hussain, claimed to have overheard Talha stating that he, Talha, had instigated Rashid, Haider and Naveed to commit the murder of Atta-ul-Karim on account of the victim belonging to the *Ahmadi* faith.

3. The accused persons, namely, Rashid, Haider and Naveed were arrested by the police in a raid on 09.10.2009. The SI's of both Police Station, New Multan and Police Station, Gulgasht participated in the raid leading up to the arrest of the accused persons. Subsequently, an identification parade was carried out on 17.10.2009 in which the Complainant as well as PWs No. 9 & 10, namely Rafia Atta and Muhammad Ahmad², participated and identified the accused persons Rashid, Haider and Naveed. The accused Talha was stated to have already been under arrest by the Seetal Mari Police in case FIR No. 144/2009 and was then formally rearrested in the present case on 27.10.2009.

4. Charges were later framed against the accused, who pleaded not guilty and claimed trial. The learned Trial Court proceeded with the trial and later convicted and sentenced the accused *vide* order dated 29.06.2010, in the following terms:

"33. ... Rashid Taqi accused is convicted and sentenced U/S 302(b) PPC with death sentence... He is further ordered to pay compensation

² The widow and brother of the deceased Atta-ul-Karim respectively.

of Rs. 2,00,000/- U/S 544-A Cr.P.C. to the heir of deceased and in case of non-payment of such compensation he will be required to suffer simple imprisonment for 6 months.

34. ... he [Rashid] is also convicted and sentenced U/S 7(a) ATA, 1997 with death sentence. He is also ordered to pay fine Rs. 1,00,000/- and in case of non-payment of fine he will have to undergo for 6 months SI...

35. ... Both Haider Ali & Naveed accused are also convicted and sentenced U/S 302(b) PPC read with section 34 PPC with imprisonment for life (each). Both the convicts Haider Ali & Naveed to pay compensation of Rs. 1,00,000/- by each to the heirs of deceased.

36. ... Consequently Talha accused is also convicted and sentenced U/S 302(b) PPC read with section 109 PPC for abetment of his co-accused with imprisonment for life. He is further ordered to pay compensation of Rs. 1,00,000/- to the legal heirs of deceased U/S 544-A Cr.P.C.

All the three convicts Haider Ali, Naveed & Talha will have to suffer 6 months SI in case of non-payment of compensation.

37. ... Haider Ali, Naveed & Talha accused will be given the benefit of section 382-B Cr.P.C."

5. The order of the Trial Court was then challenged by the accused persons through Criminal Appeal No.39 of 2010-ATA and by the Complainant through Criminal. Revision No. 405 of 2010-ATA. The foregoing cases alongside the corresponding Capital Sentence Reference No.08 of 2010, were then taken up and disposed off by the High Court, *vide*: order dated 02.02.2015 ("**Impugned Judgment**") in the following terms:

"13. For the foregoing reasons, this appeal to the extent of Rashid, Haider and Naveed is dismissed; their convictions and sentences are maintained. Death sentence awarded to Rashid-appellant is **CONFIRMED**. **Capital Sentence Reference No. 08 of 2010** is answered in **AFFIRMATIVE**. In so as case against Talha appellant is concerned, he was arrested on 26.10.2009 and admittedly was not present at the spot. There is no positive proof that he instigated the incident. Therefore, while extending benefit of doubt, he is acquitted from the charge. He shall be released if not required in any other case.

14. As a natural corollary and for the reasons stated above, **Crl. Revision No. 405 of 2010-ATA** is dismissed."

Aggrieved by the order of the High Court upholding the convictions, Rashid, Haider and Naveed filed Criminal Appeal No. 282-L/2020 whereas the State filed Cr.P.L.A 461-L/2015 against the accused Talha's acquittal.

6. Ms. Ayesha Tasneem, ASC, has appeared on behalf of the accused persons and has argued that the Impugned Order is against well-settled legal principles, as well as the law laid down and expounded by the Supreme Court. She stated that the accused persons are innocent and have not committed any crime. The learned counsel highlighted that the Complainant had initially lodged the case against three unknown persons in regards dacoity and murder but it was only 01 month and 20 days after lodging the case against the accused and 09 days after the alleged identification parade, that the Complainant, through a supplementary statement, sought to make out a more serious case by adding religious elements, so that the incident is categorised as one of terrorism. She stated that such a belated addition demonstrates *mala fide* intent on the part of the Complainant and hence the impugned decisions have not considered the law settled by this Court. She contended that the alleged identification parade was contrary to the judgments pronounced by this Court and had no legal value since the addresses, names, ages and further details of the other "suspects" in the identification row had not been recorded. Moreover, it was argued that the objections raised by the accused persons at the time of the identification parade were not addressed and that the PWs made no allegation with regards to which of the "suspects" in the identification parade shot at the deceased Atta-ul-Karim and which one of them shot at the injured Muzaffar Hussain, who never appeared as a witness.

7. The learned counsel stated that not only did the Complainant and PWs changed their story but also made "improvements" during the evidence stage of trial with the intent to bolster the prosecution's case thereby rendering the entire evidence unreliable. She added that the alleged recoveries have no legal value as

the recovered empties were sent for laboratory testing after the arrest of the accused persons. She finally contended that after the acquittal of the accused Talha, there was no longer a valid ground for accepting the Complainant's story and condemning the present accused. She has therefore prayed that the order of the High Court dated 02.02.2015 may kindly be set aside and the accused persons may be acquitted of their charges.

8. Mr. Sajjad Hussain Bhatti, learned Deputy Prosecutor General, Punjab (hereinafter referred to as DPG) has appeared on behalf of the State and has argued that the accused are nominated in a number of FIRs and were duly identified by the PWs during the identification parade. He stated that even the crime weapons were recovered on their pointation and the FSL report was in the positive against the accused persons. He argued that the deposition of the witnesses had remained unshakeable as the incident took place at the house of the Complainant and was duly reported without any delay or exaggeration. He further added that the medical evidence fully supports the case of the prosecution. He finally submitted that the accused persons do not deserve any leniency and the Reference answered in "AFFIRMATIVE" by the High Court may be upheld.

9. Apropos the acquittal appeal filed by the State against accused Talha is concerned, the learned DPG submitted that the prosecution has proved its case beyond reasonable doubt and accordingly the Trial Court has rightly convicted him through a detailed and well-reasoned order. He highlighted that there was neither any motive on the part of the Complainant to falsely implicate the accused Talha nor did the PWs have any reason to falsely depose against him. He has therefore prayed that the acquittal appeal filed by the State may be allowed and the conviction awarded by the Trial Court to Talha may be restored.

10. Mr. Muhammad Usman, ASC, learned counsel for the complainant has adopted the arguments of the DPG.

11. We have heard all the learned counsels at length and have perused the record with their able assistance.

12. Perusal of the record clearly reveals that the FIR was registered against three unknown persons while the accused persons were only identified by the PWs after 01 month and 20 days of the lodging of the FIR through a supplementary statement. Moreover, the parameters provided for conducting the identification parade were not fulfilled as it remains a mystery which of the accused persons fired towards the deceased namely Atta-ul-Karim. Furthermore, the identification parade was held when the accused persons were already sent to the jail and it is important to note that the injured Muzaffar Hussain, never appeared as a witness in the instant matter.

13. The learned DPG when confronted with these shortcomings/doubts in the prosecution's case, was unable to provide us any plausible, valid or cogent reasons in this regard. The aspect of the FIR having been registered against unknown persons also casts doubts on the identification of the accused persons. It is also an admitted fact that although the crime weapons, if any, were recovered on the pointation of the accused and the FSL report was also in the positive, but equally true is the fact that the pointation was through a supplementary statement, along with the fact that the present case was made more serious by adding religious elements to it by mentioning that the deceased belonged to the *Ahmadi* faith. The accused persons had vehemently denied causing the murder of the deceased in their statements and stated that they have falsely been roped in the present case without any legal or lawful justification. The most important aspect, in our opinion, is the fact that the

injured Muzaffar Hussain never appeared as a witness, which puts a vital dent in the prosecution's case.

14. The Complainant-Atta-ul-Naeem has simply mentioned in his statement that the accused persons were unknown and has failed to describe any of their features. Furthermore, as per his statement, it is an admitted fact that it was only one amongst the 03 unknown persons who fired upon the deceased, Atta-ul-Karim, however, the features of that assailant are also missing in his statement. Moreover, the names of these 03 persons only became known to him after the identification parade was held. It is also pertinent to note that Ms. Rafia Atta (PW-9), in her statement, explained that she did not know the names of the accused persons, however, she came to know about their names when the Magistrate asked the names of the accused persons from them. She has also admitted that only some features of the accused were disclosed by her to the Investigation Officer, and the nature, description and colour of the clothes worn by them was not disclosed. She has also admitted that she was called upon by the Judicial Magistrate for identification parade more than 02 months after the occurrence of the incident. She has also admitted that she was totally unaware of the fact as to which accused person fired towards the deceased and from which weapon. In the statement of Mr. Asif Rauf, Special Judicial Magistrate, we note that he has admitted that separate statements of the witnesses were not recorded by him before holding the identification parade and that Ms. Rafia Atta has identified the accused by their names; which in itself is contradictory to the statement of Ms. Rafia Atta who has stated that, "I came to know the name of the accused when they were called by their names by the Judicial Magistrate". He has also admitted that Ms. Rafia did not identify any of the accused with their specific role at the time of occurrence. Moreover, it was also recorded by Mr. Asif Rauf, that the Complainant, Atta-ul-Naeem, neither identified nor mentioned a specific role to the accused persons

15. In our view, for proper dispensation of justice while carrying out identification parades, the parameters as enshrined under Article 22 of the Qanun-e-Shahadat Order, 1984 read with the High Court (Lahore) Rules and Orders Volume III, Chapter 11, Part C and Rule 26.32 of the Chapter 26, Volume 3 of the Police Rules 1934, have to be fulfilled. It was held by this Court in the case of Kanwar Anwaar Ali³ that identification parades have to be held within the shortest possible period, whereas in the instant matter, admittedly, the said parade took place two months after the occurrence (as is evident from deposition of Rafia Atta, PW-9). Reliance is also placed upon a judgment of this Court titled Subha Sadiq vs The State⁴ (authored by one of us namely Athar Minallah, J) in which it was expounded in an elaborate manner the parameters required for a proper procedure to be adopted while conducting identification parade:

6. The identification parade is one of the methods of proof contemplated under section 22 of the Qanun-e- Shahadat Order, 1984. It must be carefully conducted in order to achieve its main object i.e to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection and impression. The process has to be carried out having regard to the exigencies of each case in a manner that is fair and does not indicate any collusiveness. It is merely a corroborative piece of evidence and holding of test identification parade is not mandatory. If the testimony of the witness qua the identity of the accused inspires confidence and the witnesses are consistent in all material particulars and there is nothing in the evidence to suggest that the latter had deposed falsely then in such an eventuality not conducting a test identification parade is not fatal to the prosecution's case. The omission of salient features in a crime report is not necessarily a ground to discard a test identification parade. The test identification parade is, therefore, not required when the victim had identified the accused and his statement has been found reliable. In the case of Kanwar Anwar Ali, this Court has highlighted the necessary guidelines set out in the form of executive instructions and judicial pronouncements and they are as follows:

³ Kanwar Anwaar Ali vs The State [PLD 2019 SC 488].

⁴ Subha Sadiq vs The State [2025 SCMR 50].

(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 along with 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 CH.II.C. of Vol. III of Lahore High Court Rules and Orders.

7. This Court has observed that the above measures are not exhaustive and, though these requirements are undoubtedly mandatory, at same time they are only illustrative of the precautions which a court of law must

demand before the evidence offered through the test identification proceedings can be relied upon. Moreover, in the case of Mian Sohail Ahmed, this Court has highlighted the importance of assessing the ability and capacity of the eye witnesses, separately, to identify the accused in the circumstances of each case. It has been observed that this assessment also forms part of the identification evidence along with the test identification parade. It has been stressed that for the safe administration of justice, 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' eloquently described and highlighted by this Court in the aforementioned judgment. This Court has drawn a distinction between the 'system variables' and 'estimator variables'. The former includes the test identification parade while the latter refers to factors attributed to the witness e.g. the distance from which the crime was witnessed, the level of stress likely to have suffered, the nature of weapon used, duration of the incident and characteristics of the witness etc. The process of identification of an accused has been held to involve two steps i.e the test identification parade and assessing the creditability of the eyewitness on the basis of the 'estimator variables'.

8. *In the case before us the test identification proceedings were fraught with serious infirmities and, therefore, could not be relied upon for handing down the conviction. The proceedings were conducted and supervised by a Judicial Magistrate, 1st Class (PW-13). The latter had admitted in his testimony that the features of the petitioner and the eight dummies were not recorded in the report. The petitioner was identified by three witnesses. As already noted, it was unlikely that the two police officials who had arrived at the crime scene after the incident had taken place could have identified the accused who had fired at the deceased. None of the witnesses had attributed a specific role to the petitioner. In the facts and circumstances of the case it cannot be ruled out that the witnesses of the test identification proceedings may have seen the petitioner after his arrest. It also appears from the deposition of the Judicial Magistrate, who had supervised and conducted the test identification proceedings that he was not familiar with the guidelines and principles enunciated by this Court regarding the test identification proceedings. The probity and evidentiary value of the test identification proceedings were definitely questionable and, thus, could not have been relied upon for the purposes of handing down the conviction."*

16. In our view, the above factors coupled with additional improvements in the deposition of other witnesses has made this case one that is shrouded in doubt. The following paragraph from this Court's judgment rendered in the case of Abdul Samad⁵ (authored by one of us namely Irfan Saadat Khan, J.) is relevant:

It is settled law that where there is even a single circumstance which would create a reasonable doubt in a prudent mind about the accused's guilt, then the benefit of that doubt that would firstly accrue, as of right, in the accused's favour; and secondly, such single factor could be conclusive and form the basis of acquittal.

The prosecution has in our view failed to discharge its initial burden to prove the case against the accused beyond the shadow of doubt, thus the instant appeal is allowed by extending the benefit of doubt to the accused and thereby acquitting them of their charges.⁶ Since the appeal has been allowed, Criminal Petition No. 461-L/2015 filed by the State against the acquittal of the accused Talha, has become infructuous and is accordingly dismissed.

These are the reasons of our short order dated 18.02/2025.

Islamabad
18.02.2025
Arshad/Mustafa Kundi L.C.

"Approved for Reporting"

⁵ Abdul Samad vs The State [2025 SCP 31].

⁶ Reliance may be placed on the judgments of Abdul Hayee and Abdullah alias Ghazali & another vs The State [2025 SCMR 281]; as well as Syed Fida Hussain Shah vs The State [2024 SCMR 1622] – authored by one of us namely Malik Shahzad Ahmad Khan, J.