

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

23/25

**PRESENT:** Justice Muhammad Hashim Khan Kakar  
Justice Muhammad Shafi Siddiqui  
Justice Ishtiaq Ibrahim

AFR  
AD

**Criminal Appeal No. 655/2020**

(Against the order/judgment dated 19.12.2018 passed by the Islamabad High Court in CrI. A. No. 25/2011, J. A. No. 24/2011 & CSR No. 4-T/2011)

Muhammad Abras

Appellant(s)

Versus

The State

Respondent(s)

For the Appellant(s):

Mr. Ansar Nawaz Mirza, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State:

Mr. Ghulam Sarwar Nihang, PG  
Muhammad Imran, ASI

Date of hearing:

12.03.2025

**JUDGMENT**

**Muhammad Hashim Khan Kakar, J.** The appellant, Muhammad Abras, had allegedly fired at and killed a police Constable, namely, Shamshad Akber, and caused injuries to Constable Haroon Rasheed in an incident which took place at about 1:25 a.m. on 03.06.2010. With such allegations, the appellant was booked in case FIR No. 276/2010, registered at Police Station Shahzad Town, District Islamabad on the same day and after a regular trial, the appellant was convicted by the Trial Court and was sentenced to death and ordered to pay Rs.600,000/- as compensation to the legal heirs of the deceased or in default whereof to further undergo S.I. for six months. He was also convicted under section 324 PPC for committing murderous assault and injuring Haroon Rasheed and sentenced to 10 years R.I. The appellant challenged his convictions and sentences before the Islamabad High Court through an appeal which was dismissed, however, his sentence of death was

converted into imprisonment for life. Hence, the present appeal with the leave of the Court.

2. Briefly stating the prosecution story, as given in the impugned judgment, is that, the complainant Muhammad Imran along with Muhammad Haroon Constable were on patrol, armed with SMG in official vehicle in the area of Shahzad Town, whereas Shamshad Akbar and Muhammad Imran on official motorcycle were present in the area for patrolling as well. Meanwhile, complainant along with his companions reached at Khanna Pull on the call of Circle Officer, who was not present at that place, where one driver of a private vehicle who came from Northern side of Service Road informed that two suspected young men riding on a motorcycle are present at Service Road near CNG station and requested that they be checked. On receiving that information, Muhammad Imran went to change his wireless set. Due to which Shamshad Akbar went alone on the official motorcycle while being followed by other police officers in a vehicle. When they reached Service Road at about. 1:25 a.m. in front of Street No. 5 near Sardar Marriage Hall, they found one motorcycle coming from front side and two persons were riding on the said motorcycle. Shamshad Akbar tried to stop them by intercepting his motorcycle in front of the motorcyclists; who threw their motorcycle on the ground and fired a shot upon Shamshad Akbar which hit his face below right eye, and he fell down. The above two persons while committing act of terrorism also made straight indiscriminate firing upon complainant and his companions. As a result of which Haroon Rashed was injured whereas two shots also hit the official vehicle from driver side. Complainant and his companions' gunman also resorted to firing in self-defense due to which both the motorcyclists fled away, leaving their motorcycle, while resorting to indiscriminate firing.

3. We have heard the appellant's learned counsel, who vehemently argued that the prosecution had not proven its case against the appellant beyond a reasonable doubt and that, as a result, the appeal should be accepted leading to the appellant's acquittal. The learned Prosecutor General on the other hand argued that the instant appeal



may be dismissed since the prosecution has successfully established the appellant's guilt.

4. The fact that the appellant was neither named in the FIR nor arrested at the scene of the crime is not in question. After fifteen days of the incident, he was finally taken into custody on 26.07.2010 based on intelligence gathered by spies. At 1:25 a.m., in the dead of the night, the incident in question had transpired, but the perpetrators remained a mystery. The site plan and the First Information Report (FIR) did not indicate the presence of any lighting sources at the location of the incident, which was on the service road next to Sardar Marriage Hall. It was unbelievable that the witnesses could see and identify the perpetrators in the complete darkness of the scene. It seems like a tall claim to identify the perpetrators later under these conditions. The appellant was subjected to a test identification parade on 06.08.2010 following his arrest on 26.07.2010 as revealed in the record. The appellant was held in custody for the duration of the investigation and Muhammad Imran and Haroon Rasheed, who were present at the identification test, continued to work at the same police station, i.e., P.S. Shahzad Town. The fact that they had chances to meet the appellant at the aforementioned police station during the investigation does not change the fact that they had authoritatively recognized the appellant during the identification parade before the Magistrate. Likewise, it is inarguable that the appellant's identification was made during the identification parade, yet the prosecution witnesses supposedly accurately identified him without mentioning his claimed role in the incident. Given these facts, the test identification parade was no longer useful as evidence.

5. The ocular account has been provided by Muhammad Imran (PW-10) and Haroon Rasheed (PW-2), with Haroon Rasheed claiming to have sustained a firearm injury during the incident. The learned Prosecutor General contended that the injury sustained by PW-Haroon-ur-Rasheed serves as definitive evidence of his presence at the scene, thereby rendering his testimony inherently credible, independent of the need for additional corroboration. At this point, it is important to note that while

the firearm injury sustained by Haroon Rasheed suggests his presence at the scene, it does not serve as definitive evidence to substantiate the veracity of his testimony before the court. It is indisputable that Haroon Rasheed's presence as an injured party at the scene cannot be questioned. However, the veracity of his account, as presented to the court, must be assessed within the context of the surrounding facts and circumstances of the case. Injuries do not inherently grant access to the truth and, therefore, a narrative must resonate with authenticity to warrant trust. Reference can be made to the case of *Nazir Ahmad v Muhammad Iqbal* (2011 SCMR 527), which is presented as follows:

"It is settled law that injuries of P.W are only indication of his presence at the spot but are not affirmative of his credibility and truth."

6. Another significant feature of the case is the failure to record the statement of the aforementioned witness under section 161 of the Cr.P.C., despite the witness being stationed at the same police station. Section 265-C of the Cr.P.C. mandates that the trial judge must provide the accused with statements and documents specified therein, including witness statements recorded under Sections 161 and 164 of the Cr.P.C. In the instant case, the witness statement under section 161 of the Cr.P.C. was not documented. The record indicates that Haroon-ur-Rasheed purportedly sustained injuries at the time of occurrence on 03.06.2010, however, he failed to present himself to the police, nor was he summoned to provide his statement, until he appeared before the trial judge for the first time on 02.11.2010, six months after the incident. We concur with the learned Prosecutor General for State that the mere failure to examine a witness by the police does not preclude the admissibility of that individual's statement as evidence. Nevertheless, the primary consideration for the courts is whether the lack of examination under section 161 Cr.P.C has resulted in any prejudice to the accused. In this case, Haroon-ur-Rasheed, the prosecution's star witness and an injured party, did not have his statement recorded under section 161 Cr.P.C, and his initial appearance before the court on 02.11.2010 undoubtedly astonished the appellant. Prolonged silence regarding the issue is adequate to invalidate the entire evidence, as his behavior was exceedingly irregular. The appellant was unaware of the specific point



and purpose for which this witness was listed in the charge-sheet, and he was taken by surprise when the witness was examined as an eyewitness in court. Although it is obligatory to document a witness's statement during the investigation when the witness is available and referenced in the charge-sheet, the prosecution must elucidate why the statement was not recorded and the specific points on which the witness was to be examined, particularly given that the witness is a crucial eyewitness to the incident. Given the unusual circumstances of the case, the Trial Court had no alternative but to regard the witness's account as absolute truth, as it was not challenged by his prior statement. This has undoubtedly resulted in prejudice against the appellant, who was unable to confront the witness regarding the omissions and improvements made during his testimony in court.

7. In reconsidering the purported recovery of the crime weapon based on the appellant's indication, we note that the crime empties were collected on 03.06.2010 from the scene of the incident, while the alleged recovery of the crime weapon occurred on 16.08.2010. Notably, both items were subsequently received by the Forensic Science Laboratory, Punjab on 03.09.2010 from an individual named Faheem Ahmed No.7685-C, which transpired approximately 18 days after the claimed recovery. In the matter of *Nasrullah v State* (2017 SCMR 724), this Court noted that the retrieval of the pistol from the appellant's possession bore no legal significance, as the laboratory's report revealed that both the recovered pistol and the secured crime empties had been submitted on the same day, thereby casting doubt on the potential for fabrication. In a comparable manner, the samples were dispatched to the laboratory following a considerable delay, which stripped the positive report (Ex.PFF) of any evidentiary significance.

8. Oral and medical evidence also contradict each other. PW-Haroon Rasheed claimed to have sustained a firearm injury on his left ankle at the time of occurrence, but the medical certificate provided by Dr. Faisal Kakar shows that the injury occurred on his right lower leg. This disparity calls into question the validity of the evidence used against the appellant.



9. For what has been discussed above, we have found that the prosecution had failed to prove its case against the appellant beyond reasonable doubt. Consequently, whilst setting aside the impugned judgments, this appeal is allowed and the appellant is acquitted of the charge levelled against him by extending him the benefit of doubt. He should be released forthwith if not required in any other case.

Islamabad  
12.03.2025  
(Farrukh/Mahnoor Omer LC)

Approved for Reporting