

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

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa  
Mr. Justice Dost Muhammad Khan  
Mr. Justice Ijaz ul Ahsan

**Criminal Appeals No. 128, 129 and 130 of 2010**

(Against the judgment dated 01.04.2009 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Appeals No. 371, 375 and 383 of 2002 and Murder Reference No. 608 of 2002)

<b><i>Azhar Mehmood, etc.</i></b> <b><i>Azam Sher</i></b> <b><i>Asad Ali</i></b>	<i>(in Cr. A. 128 of 2010)</i> <i>(in Cr. A. 129 of 2010)</i> <i>(in Cr. A. 130 of 2010)</i>  <b><i>versus</i></b> <b><i>The State</i></b>  <i>(in all cases)</i>
	<i>...Appellants</i>          <i>...Respondents</i>

For the appellants:	Mr. Tanveer Iqbal, ASC Mr. Niaz Ahmed Rathore, ASC Syed Rifaqat Hussain Shah, AOR <i>(in Cr. A. 128 of 2010)</i> Mr. Niaz Ahmed Rathore, ASC <i>(in Cr. A. 129 and 130 of 2010)</i>
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For the State:	Ch. Zubair Ahmed Farooq, Additional Prosecutor-General, Punjab <i>(in all cases)</i>
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Date of hearing:	02.11.2016
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**JUDGMENT**

**Asif Saeed Khan Khosa, J.:** A dacoity had allegedly been committed in the house of Muhammad Ramzan complainant at about 08.00 P.M. on 20.08.2001 in the area of Police Station Saddar Hassan Abdal, District Attock and during the said dacoity two persons namely Muhammad Ijaz and Muhammad Anwar had been done to death. The culprits committing the alleged offences had remained unknown and FIR No. 245 had been lodged in respect of that incident by Muhammad Ramzan complainant at the above mentioned Police Station at 09.55 P.M. during the same

night. The present appellants namely Azhar Mehmood, Muhammad Altaf, Azam Sher and Asad Ali had subsequently been implicated in this case and after a regular trial the trial court convicted the appellants for offences under sections 460, 396 and 302(b), PPC read with section 34, PPC and sentenced them to various terms of imprisonment besides sentences of death on two counts of the charge under sections 396 and 302(b), PPC. Later on the High Court had upheld the sentence of death passed against Azhar Mehmood appellant whereas on the charge of murder the sentences of death passed against the remaining appellants were reduced to imprisonment for life each. The High Court had converted the appellants' convictions for an offence under section 396, PPC into those for an offence under section 398, PPC and had passed a reduced sentence against the appellants for the said offence. The convictions and sentences of the appellants for the offence under section 460, PPC read with section 34, PPC were, however, upheld and maintained by the High Court. Hence, the present appeals by leave of this Court granted on 05.04.2010.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

3. It has straightaway been noticed by us that the occurrence in this case had taken place after dark and in the FIR no source of light at the spot had been mentioned by the complainant. Although in the site-plan of the place of occurrence availability of an electric bulb near the spot had been shown yet no such bulb had been secured by the investigating officer during the investigation of this case. The present appellants had not been nominated in the FIR wherein it had been mentioned that the offences in issue had been committed by six unknown culprits but later on it had been maintained by the prosecution that the present appellants had been overheard by a witness discussing amongst themselves the commission of offences by them relevant to the dacoity and murders taking place at the house of the complainant. It was in

that dubious background that the present appellants had been arrested on 24.09.2001 and later on they had statedly been identified by the eyewitnesses namely Muhammad Ramzan complainant (PW15) and Arif Ali (PW16) in the test identification parades conducted on 01.10.2001 and 08.05.2002. We have gone through the statements made by the supervising Magistrates, i.e. PW5 and PW10 as well as the proceedings of the test identification parades and have straightaway noticed that in the said parades the present appellants had not been identified with reference to any role played by them in the incident in issue. It has consistently been held by this Court that such a test identification parade is legally laconic and is of no evidentiary value and a reference in this respect may be made to the cases of Khadim Hussain v. The State (1985 SCMR 721), Ghulam Rasul and 3 others v. The State (1988 SCMR 557), Asghar Ali alias Sabah and others v. The State and others (1992 SCMR 2088), Mehmood Ahmad and 3 others v. The State and another (1995 SCMR 127), Siraj-ul-Haq and another v. The State (2008 SCMR 302), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Shafqat Mehmood and others v. The State (2011 SCMR 537), Sabir Ali alias Fauji v. The State (2011 SCMR 563) and Muhammad Fayyaz v. The State (2012 SCMR 522). During the trial the above mentioned eyewitnesses had maintained that the appellants facing the trial were the actual culprits and the courts below had found such identification of the appellants during the trial to be of significance. We, however, note that both the above mentioned eyewitnesses, i.e. PW15 and PW16 had appeared before the trial court after 14 prosecution witnesses had already made their statements before the trial court and on all such occasions the present appellants were physically present in the dock and, thus, the above mentioned eyewitnesses had ample opportunities to see the present appellants in the courtroom on all such occasions. Even prior to that the appellants had been produced before the trial court at the time of framing of the charge and even at the time of obtaining remand from the concerned forum. This is why identification of a culprit before the trial court during the trial has repeatedly been held by this Court to be

unsafe and a reference in this respect may be made to the cases of Asghar Ali alias Sabah and others v. The State and others (1992 SCMR 2088), Muhammad Afzal alias Abdullah and another v. State and others (PLJ 2009 SC 333), Nazir Ahmad v. Muhammad Iqbal (2011 SCMR 527), Shafqat Mehmood and others v. The State (2011 SCMR 537) and Ghulam Shabbir Ahmed and another v. The State (2011 SCMR 683). As regards the alleged recovery of weapons from the appellants' custody during the investigation suffice it to observe that the recovered firearms had not matched with the crime-empties secured from the place of occurrence and the alleged recoveries had been discarded by the High Court. The medical evidence produced by the prosecution could not point towards any particular culprit. The only remaining piece of evidence produced by the prosecution was in respect of an alleged abscondance of Muhammad Altaf appellant but in the circumstances of the case we have not found the alleged abscondance of the said appellant to be totally inconsistent with the hypothesis of his innocence.

4. For what has been discussed above a conclusion is inescapable that the prosecution had failed to prove its case against the appellants beyond reasonable doubt. These appeals are, therefore, allowed, the convictions and sentences of Azhar Mehmood, Muhammad Altaf, Azam Sher and Asad Ali appellants are set aside and they are acquitted of the charge by extending the benefit of doubt to them. They shall be released from the jail forthwith if not required to be detained in connection with any other case.

Judge

Judge

Judge

Islamabad

02.11.2016

Approved for reporting.

Arif