

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Cr. Appeal NO. 222 of 2022

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Johan Masih

Vs

The State

HIGH COURT OF SINDH

Composition of Bench.

S.B.

Mr. Justice Muhammad Karim Khan Agha

Date of hearing: 11-09-2024

Decided on : 18-09-2024

Judgment approved for Reporting

Yes

*KAR*

CERTIFICATE.

Certified that the judgment \*/Order is based upon or enunciates a principle of law  
\*/decides a question of law which is of first impression/distinguishes/. Over-rules/  
reverses/explains a previous decision.

\* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first  
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the  
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

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01

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 222 /2022

**JOHAN MASIH  
S/O ARIF MASIH**

Presently confined in Malir Jail,  
At Karachi

05-04-2022

*[Signature]*  
Deputy Registrar (C.C.)

**APPELLANT/ACCUSED** 15/2

**VERSUS**

**THE STATE** ..... **RESPONDENT**

FIR No: 87/2020  
U/S: 397/34 PPC  
P.S: Sahil, Karachi

## **APPEAL U/S 410 CRIMINAL PROCEDURE CODE**

Being aggrieved and dissatisfied with the impugned judgment dated:22-03-2022 passed by the Learned IX<sup>TH</sup> Additional District & Sessions Judge at Karachi South in Session Case No.1999/2020 (**The State V/S Johan & others**) arising out of FIR No.87/2020 U/s: 397/34 PPC at Police Station: Sahil, Karachi, thereby convicting the Appellant, he is convicted and sentenced for the offence punishable U/s: 392 PPC for suffer R.I for 03 years and fine Rs.10,000/= (Ten Thousand Only) and in default of payment, suffer S.I for 03 months and the appellant is extended benefit under section 382-B, Cr.P.C accused namely Johan S/o Arif Masih is produced in Jail custody and he is remanded back to jail authorities concerned with conviction warrant to serve the convictions and sentences.

It is therefore prayed that this Hon'ble Court may be pleased to call R&P of above case from the Learned IX<sup>TH</sup> Additional District & Sessions Judge at Karachi South and after hearing the Appellant/Accused and his counsel, it may be pleased to set-aside the impugned Judgment dated: 22-03-2022 or pass any other and further Judgment for a just decision of the case in the interest of justice under the following facts and grounds:-

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha*

### CRIMINAL APPEAL NO.222 OF 2022

Appellant: Johan Masih, s/o Arif Masih, Through Ms. Fariyal Ishaque, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh & Mr. Mumtaz Ali Shah & Syed Arshad Hussain Naqvi, Addl. P.G. Sindh.

Date of Hearing : 11.09.2024

Date of Judgment : 18.09.2024

### J U D G M E N T

*Mohammad Karim Khan Agha, J.* Appellant Johan Masih son of Arif Masih, was tried in the Court of IXth Addl. District & Sessions Judge (South) Karachi in Session Case No.1999 of 2020 arising out of FIR No.87 of 2020 under Sections 397/34 PPC registered at Police Station Sahil, Karachi and vide Judgment dated 22.03.2021 he was convicted and sentenced under section 392 PPC to suffer R.I. for 03 years and pay fine Rs.10,000/- (Rupees Ten Thousand only). In case of default in payment of fine he shall suffer SI for (03) months more. However, he was also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 17.08.2020 at about 0015 hours, complainant alongwith his fiancée namely Molna Liza were on his motorcycle at Do Deryia meanwhile complainant went on his motorcycle to Sahil Avenue near Khayaban-e-Iqbal Phase-VIII, DHA Karachi where three persons duly armed on one motorcycle came and stopped him and snatched bag of complainant's fiancée containing mobile phone Infix Hot-8 alongwith SIM No.0331-6075683 and 0318-0267131, and also wallet of complainant containing duplicate colour copy of CNIC and cash of amount of Rs.500/- meanwhile complainant saw area police mobile and started shouting Daku Daku. On seeing the police mobile two persons fled away and one person was arrested on spot who on inquiry disclosed his name as Johan and he also disclosed absconder accused namely Shan and one unknown accused. Police conducted



personal search and recovered one 30 bore pistol alongwith 02 bullets and police also recovered wallet and mobile of complainant from accused Johan, therefore complainant lodged FIR against accused persons. On 19-08-2020, accused Shan was arrested by police at Sahil Avenue near Khayaban-e-Iqbal Phase VIII, DHA Karachi and police recovered one 32 Revolver without number alongwith loaded magazine containing two live bullets, accused arrested in another case/crime and admitted his guilt during investigation hence the complainant lodged the FIR against the nominated accused persons.

3. After usual investigation the matter was challaned and the appellants were sent up to face trial. They pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined seven (07) PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. wherein they denied the allegations leveled against them and claimed their innocence. Neither of the appellants gave evidence on oath or called any witness in support of their defence case.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence. The other appellant Shan was acquitted of the charge.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and that he has been falsely implicated in this case; that the eye witnesses are not reliable and their evidence should be disbelieved, that there are material contradictions in the evidence of the prosecution witnesses; that there was no independent mashir; the pistol and alleged robbed articles were foisted on the appellant by the police and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt.

8. On the other hand Learned APG after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, he contended that the FIR was lodged promptly, the eye witness evidence was trust worthy, reliable and confidence inspiring and was to be believed; that the pistol was recovered



from the appellant on his arrest on the spot along with robbed items immediately after the robbery and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed.

9. I have heard the learned counsel for the appellant as well as learned APG and have also perused the material available on record.

10. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) The Section 154 Cr.PC statement was lodged on the spot immediately after the incident which lead to the FIR being lodged within one hour. Hence there is no delay in the lodgment of the FIR leaving the appellant no time to cook up a false case against the appellant.
- (b) The appellant was arrested on the spot by the police from whom the stolen items and an unlicensed pistol was recovered from the appellant who is named in the promptly lodged FIR with the specific role of robbing the complainant by show of firearm. Even otherwise **no specific /proven enmity** has come on record between the appellant and the complainant or any PW which would motivate him/them to lodge a false case or give false evidence against the appellant.
- (c) The prosecution's case mainly rests on the eye witnesses to the robbery and the immediate arrest of the accused on the spot whose evidence I shall consider in detail below;
  - (i) **Eye witness PW 1 Falix. He is the complainant in the case.** According to his evidence on 16.08.2020 when he and his fiancé Mola Liza were returning on his motor bike from Do Deryia at about 0015 he was intercepted by another motorbike with 3 person on it at Khy-e-ban Iqbal Phase VIII DHA who stopped them under show of firearms arms and snatched the hand bag of his fiancé (Mola Liza) which contained a mobile phone and also snatched his wallet which contained a color copy of his CNIC and cash. The police mobile reached and caught the accused who was on foot who also named his acquitted co-accused and one unknown person as being involved in the robbery. Police recovered the robbed items and a pistol from the accused.

This eye witness is an independent witness. He had no relationship with the accused and no ill will or enmity with him so as to involve him in a false case. His promptly lodged S.154 Cr.PC statement was not materially improved upon during the course of his

evidence. He was not damaged during a lengthy cross examination. The items which were robbed from him were recovered when the accused was arrested on the spot together with an unlicensed pistol hence the question of misidentification does not arise. Further it does not appeal to logic, reason or commonsense that the accused who the complainant did not know would be found with the complainants copy colour CNIC unless he had robbed it along with his wallet. I find his evidence to be reliable, trust worthy and confidence inspiring and I believe the same and place reliance on it.

(ii) **Eye witness PW 2 Mona Liza** who was with the complainant at the time of the robbery corroborates the complainant in all material respects. She to was an independent witness who had no reason to falsely implicate the accused in the crime. Her S.161 Cr.PC statement was made within a day of the incident and her evidence was not materially improved from the same which I also find to be trust worthy, reliable and confidence inspiring and hence I believe her evidence and place reliance on it.

(iii) **Eye witness PW 3 Mujahid Iqbal**. According to his evidence he was on patrol and when he reached Khyaban-e-Iqbal DHA at about 0015 hours he heard one person shouting Daku, Daku who informed him of the incident and then he was able to grab hold of the accused while he was trying to make his escape good on foot whilst the other two persons made their escape good. The accused informed him that his name was Joham from which a pistol and robbed items were recovered. The accused also told him the name of his co-accused Shan who was arrested two days later. He recorded the complainants S.154 Cr.PC statement on the spot.

Admittedly this eye witness who arrested the accused on the spot with the unlicensed pistol and recovered items was a police officer. However he had no ill will or enmity with the appellant and as such he nor any other police witness had any reason to falsely implicate the appellant in this case. For instance by foisting the pistol on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474). Thus, I believe the evidence of this police eye witness as well as the IO and other police witnesses who were not dented during cross examination.

Thus, I find the evidence of this eye witness to be reliable trust worthy and confidence inspiring and believe the same.



It is well settled by now that I can convict the accused on the evidence of a **sole eye witness** provided that I find his/her evidence to be trust worthy, reliable and confidence inspiring and in this case I have found the evidence of three eye witness to be trust worthy, reliable and confidence inspiring especially in respect of the correct identification of the appellant who committed the robbery by show of arms and who was arrested on the spot along with robbed items and as such I believe the same and place reliance their evidence . In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Qasim Shahzad and another v The State** (2023 SCMR 117). Their evidence is also of good quality and it is settled by now that it is not the length of the evidence which is of importance but its quality.

Having believed the evidence of the three eye witnesses as to the robbery of the complainant and his fiancé and the recovery of the unlicensed pistol from the accused I turn to consider the corroborative/supportive evidence whilst keeping in view that it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784) as under;

*"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"*

- (d) That the pistol used in the robbery was recovered from the accused when he was arrested on the spot along with the robbed items.
- (e) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the complainant and his fiancé going out on a motor bike ride to the beach to them being intercepted by three others on a motor bike and robbed at gun point to the police arresting the accused on the spot with the unlicensed pistol and items which had just been robbed from the accused.
- (f) It is true that there was no independent mashir however it has now become a judicially recognized fact that in such like cases independent members of the public do not want to involve themselves and as such today the fact that there are no independent mashir's is not of huge significance especially when the eye witness evidence is believed and the eye witnesses are independent witnesses.

- (g) The fact that the appellant's co-accused was acquitted of the charge is of no assistance to the appellant as his case was on a different footing. Namely, whilst the accused was arrested on the spot the co-accused Shan made his escape good and was arrested on the statement of another co-accused (the appellant) and co-accused a few days later and Shan was shown to the complainant before the identification parade which made the identification parade of no legal value. Furthermore no stolen items were recovered from co-accused Shan at the time of his arrest.
- (h) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case as set out by the appellant in his S.342 Cr.PC statement is simply false implication. The appellant did not give evidence on oath or call a single defence witness in support of his claim of false implication. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case as an after thought which has not at all dented the prosecution case.

11. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and sentenced in the impugned judgment and as such his appeal is **dismissed**.