

IN THE HIGH COURT OF SINDH AT KARACHI

CR.J.A.NO.91 OF 2014

1. Ejaz Hussain  
s/o Muhammad Hussain
  2. Khursheed Muhammad @ Guddu  
s/o Abdul Majeed
- Appellants

Versus

The state

Respondent

FIR No.292/2013  
U/S 392/34 PPC  
P.S.Gulshan-e-Iqbal.

Date of hearing : 8.6.2016  
Date of Judgment : 8.6.2016  
Appellants. : Through Mr.Ashraf Hussain,  
Advocate  
State : Through Mr.Zafar Ahmed  
Khan, APG

JUDGMENT

ABDUL MAALIK GADDI, J;- This appeal is directed against the Judgment dated 28.2.2014 passed by the learned VIIIth Assistant Sessions Judge, Karachi (East), in Session Case No.848/2013, re state ...versus Ejaz Hussain and another, arising out of Crime No.292/2013, P.S. Gulshan-e-Iqbal, Karachi, registered for offence U/S 392/34 PPC, whereby, the appellants were convicted and sentenced to suffer Rigorous Imprisonment for 7 years

each and to pay a fine of Rs.40,000/- each and in case of failure of payment of fine, they will further suffer Simple Imprisonment (S.I) for two months each, however, benefit of Section 382-B Cr.P.C. was also extended in favour of the appellants.

2. Brief facts of the prosecution case as per FIR lodged on 13.6.2013 at about 1600 hours by Amir Abbas son of Saleem Ali, alleging therein that he is residing at the address mentioned in column No.2 of FIR, with the averments that he is distributor of Naurus Company. On the same day he was going through his car bearing No.ARX-527, maker Suzuki, Alto, alongwith Company cash amounting of Rs.4,59,520/- for depositing to Soneri Bank, Gulshan-e-Iqbal Branch, Karachi, at about 12.30 hours when he reached in front of house No.R-246/2, Block-13-D/2, suddenly three boys riding on two motor cycles came there and snatched the above said cash amount on the force of weapons and went away. Hence this FIR was lodged against the accused persons. Thereafter both accused person were arrested by the police of P.S Sharifabad and cash property viz cash Rs.1,76,000/- was also recovered from their possession.

3. As per record it appears that on 17.7.2013 all police papers were supplied to the appellants and formal charge against the appellants was framed on 14.9.2013 at Exh.4.

Appellants met the charge with denial and pleaded not guilty vide their pleas on record at Exh.4-A and 4-B.

4. In order to prove its case prosecution examined complainant Amir Abbas at Exh.5, he produced FIR, memo of place of incident and memo of arrest of accused at Exh.5/A to 5/C respectively. ASI Nadeem of P.S Sharifabad was also examined at Exh.6, he produced memo of arrest and recovery of TT pistols alongwith hand make sketch of pistol at Exh.6/A. Prosecution has also examined PW S.I.Shabbir Gopang (author of FIR), P.C.Muhammad Zubair (Mushir of arrest and recovery), Afaq Naseem working in Naurus Company, and S.I Muhammad Aslam Balouch at Exh.7 to 11 respectively and thereafter vide order dated 24.2.2014 prosecution side was closed.

5. The prosecution witnesses were cross-examined by the accused themselves.

6. Statement of both the appellants under section 342 Cr.P.C. were recorded in which they have claimed false implication in this case and denied the prosecution allegations, raising plea of innocence.

7. After hearing the learned ADPP for the state and accused in person's trial Court recorded the conviction and sentenced against the appellants as stated above. Said Judgment has been impugned before this Court.

8. Heard the parties advocates and perused the record.

9. It is contended by the learned Counsel for the appellants that the case against the appellants is false, and has been registered due to enmity; that nothing was recovered from the possession of the appellants and recovery if any has been foisted upon them; that a fair opportunity was not provided to the appellants to engage defence counsels, as such, both appellants have not cross examined the prosecution witnesses properly, therefore, he was of the view that the case may be remanded to the trial Court to provide the fair opportunity to appellants to cross-examine the prosecution witnesses. In support of his contention, he has relied upon the case of Nusrat versus The state reported in 1997 MLD 1358, [Federal Shariat Court]. He also argued that there is contradiction in between the prosecution witnesses which falsify the case of the prosecution.

10. Mr. Zafar Ahmed Khan, learned APG appearing for the state has supported the impugned judgment by arguing that the impugned judgment is perfect in law. He further submits that the complainant of the case namely Amir Abbas from whom the amount was snatched by the appellants in his statement recorded on oath has implicated the present appellants in clear terms and recovery was also effected from the appellants and this fact has been proved from Exhibits.5 and 6-A of the trial

Court's file. He further submits that both appellants were given fair opportunity to engage their counsels and they engaged Mr. Syed Rashid Ali, Advocate to defend them, however, the appellants have cross examined the prosecution witnesses themselves but they remained unshaken.

11. From the perusal of record it appears that FIR of the incident was lodged by complainant Amir Abbas on 13.6.2013 with allegations that on the day and time of incident when he was going through his car bearing No.ARX-527, maker Suzuki Alto, alongwith Company cash of amount of Rs.4,59,520/- for depositing in Soneri Bank Gulshan-e-Iqbal Branch, Karachi, at about 1230 hours when he reached in front of House No.R-246, Block-13-D/2, suddenly three boys riding on two motor cycles came there and snatched the above said case amount on the force of weapon and went away. FIR has been lodged against the unknown persons. It is pertinent to mention here that if complainant had any ill will/enmity with appellants then certainly he could give the names of the appellants in the FIR but he did not do so, hence it appears that the complainant has no any enmity with the appellants. As per record, it appears that appellants were arrested by ASI Nadeem on 13.6.2013 by Shairfabad police in presence of PWs HC Abdul Razzaq and P.C. Muhammad Zubair and also recovered some of the looted amount of Rs.1,76,000/- and so also crime weapon, this

fact is evident from the evidence of PW ASI Nadeem available on record at Exh.6 and so also mushirnama of arrest, recovery of looted amount and crime weapon at Exh.6/A, evidence of ASI Nadeem has also found supported by the evidence of P.C.Muhammd Zubair who is the mushir of arrest and recovery, both these witnesses have not cross examined by the appellants, though chance was given. The evidence of PW ASI Nadeem and P.C.Muhammad Zubair are on oath. It is settled law that if a particular fact deposed on oath and the same has not been controverted/ cross-examined, presumption would be that fact has been accepted by the other side.

12. I have gone through the evidence of complainant Amir Abbas available at Exh.5 in his evidence the complainant while mentioning the facts of the case as mentioned in the FIR has clearly identified the appellants/accused in Court room during evidence by stating that the accused present in Court are same who snatched cash amount from him by force of weapons. Appellants have not cross examined the complainant though opportunity was given, prima facie shows the involvement of the appellants in the case which appears to serious, heinous in nature and so also against the society. It is pertinent to mention here that appellants were represented by one Syed Rashid Ali, advocate, whose vakalatnama is available on record in trial Court file and this advocate has only come forward to cross examine the

PW Afaq Naseem but the said witness during cross-examination has not been shattered, therefore, under the circumstances, it could not be said that appellants were not given fair opportunity to defend their case. As such under these circumstances remand of the case as prayed by counsel for the appellants would not serve any purpose.

13. I have gone through the evidence of PW Shabbir Gopang, who is author of the FIR was examined and who after registration of the FIR handed over the case paper to the Investigation branch, therefore, his evidence is formal in nature.

14. There is evidence of complainant Amir Abbas and PW Afaq Naseem on record, these are star witnesses, who have fully supported the version of the prosecution and there is no any major contradiction in the version of these witnesses has been pointed out by the learned Counsel for the appellants.

15. I have gone through the evidence and documents on record with the assistance of parties advocates, it appears that ocular evidence as discussed above which is available on record furnished sufficient corroborating evidence against the accused persons regarding commission of present crime, as such, there are overwhelming evidence on record to connect the appellants with present crime. It is pertinent to mention here that from the perusal of police

file it appears that appellants are habitual criminal and involved in many other cases, it is not out of place to mention that offence of snatching of valuable articles i.e. car, motor cycles, cash amount etc. of the citizen are increasing day by day in the country, therefore this type of activities are to be curbed with iron hands.

16. In view of the above facts and circumstances of the case no perversity, illegality and incorrectness have been found in the impugned judgment, learned trial Judge while passing the impugned judgment has appreciated all the points involved in this case. No illegality has been pointed out. I, therefore, under the facts and circumstances of the case find no merit in this Criminal appeal which is dismissed.

17. This appeal was dismissed by me by short order after hearing the parties counsel at length in open Court in the early part of the day and these are the reasons of the same.

JUDGE