

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 547 of 2023

Appellant : Imran Shah s/o Hidayatullah
through Abdul Naeem A. Qureshi.

Respondent : The State
through Mr. Neel Parkash Parmer, Asst. P.G.

Date of hearing : 09.04.2025.

Date of order : 24.04.2025.

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – The appellant Imran Shah was convicted by the Court of learned VIIIth Additional Sessions Judge Karachi-Malir, in Sessions Case No.84/2022 (The State v. Muhammad Imran Shah) emanating from FIR No.637/2021 offence u/s 411, 412, 413, 34 PPC of P.S. Malir City, Karachi vide judgment dated 17.10.2023. He was sentenced to two years R.I for offence under Section 411 PPC and fine of Rs.50,000/-. In case of default, he had to suffer S.I. for one month more and R.I. for five years for an offence under Section 413 PPC and fine of Rs.100,000/-. In case of default, he had to suffer S.I. for two months. Both sentences to run concurrently with benefit of Section 382-B Cr.P.C.

2. The facts led to the prosecution's case are that on 05.11.2021, police party headed by ASI Manzoor Ahmed on spy tip, apprehended the appellant under Malir-15 Bridge and recovered 84 mobile phones, I-phones and tablets of different companies, detail thereof mentioned in the FIR, which were dishonestly received/purchased by the accused being habitual dealer of stolen and robbed properties. Consequent upon; case was registered inter-alia on above facts.

3. The appellant pleaded not guilty and claim trial. To substantiate its case, prosecution examined ASI Manzoor Ahmed (Complainant), PC Mansoor Ali (Mushir) and Muhammad Paniyal (Investigating Officer). The accused in his statement under Section 342 Cr.P.C. denied the wrong doing and claimed that he was apprehended by the police and subsequently brought at his rented Shop No.F-05, First Floor, Amma Tower, Saddar Karachi, wherefrom such mobile phones were taken. In support of such statement produced judgment of case No.62 of 2022 and ordered dated 07.07.2022 along with deposition recorded in Case

No.08/2021, memory card containing CCTV footage and cell phone recording.

4. At the very outset, the learned counsel for the appellant contended, learned trial Court not appreciated the material contradictions in the evidence of the witnesses brought on record and passed the impugned judgment on wrong assumptions; the appellant is a mobile shopkeeper, dealing in sell & purchase the new and used mobile phones at shop situated in Amma Tower, he was picked up by the police on 30.10.2021 for which his wife filed an application to the concerned police station for her missing husband (appellant) on 31.10.2021; the alleged recoveries are basically the displayed items/mobiles of the shop of appellant, which were picked up by the police and about 150 mobile phones along with laptops were taken with them, as clearly shown in the CCTV footages of camera recording; the other two FIRs bearing crime Nos.503/2021 offence u/s 392 PPC of P.S. Ibrahim Hyderi and 634/2021 offence u/s 380, 427 PPC of P.S. Malir City have been registered one day before the registration of instant FIR i.e. on 05.11.2021; no private person has come forward or shown by the prosecution in the instant crime to claim that the recovered mobile phone(s) from the appellant is/was his property; ingredients of Sections 411 & 413 do not attracted to the facts of the instant case; there were glaring discrepancies in the evidence brought on the record, for which the appellant deserves its benefits.

5. On the other hand, learned APG supported the trial Court's findings and reluctantly agreed that the prosecution failed to produce any private person or the person in the FIRs if any to corroborate the prosecution theory. He also did not deny the CCTV footages produced by the defense.

6. Perusal of the impugned judgment reflects that the plea taken by the learned counsel for the appellant regarding picking up the appellant by the police on 30.10.2021, prior to the date of incident and in this regard, wife of the appellant filed an application to the SHO concerned on 31.10.2021, is silent and un-debated. Furthermore, the FIRs bearing crime Nos.503/2021 offence u/s 392 PPC of P.S. Ibrahim Hyderi and 634/2021 offence u/s 380, 427 PPC of P.S. Malir City have been registered against the appellant one day prior to registration of the instant case i.e. 04.11.2021, however, both the dates of incident are extremely far from the dates of lodging of FIRs which shows that the appellant maliciously involved by the police in the said crimes. As far as the recovery of 84 mobile phones is concerned, admittedly, the venue of occurrence is

situated in a well-populated area but not a single private person has been associated to witness the alleged occurrence. Rather, the plea taken by the appellant seems to be convincing that he was taken by the police on 30.10.2021, whereby on the following day his wife submitted an application with the SHO concerned, making complaint regarding missing of her husband (appellant). The defense plea further supported by the CCTV recording produced by the appellant in his statement under Section 342 Cr.P.C., showing the police taking the mobile phones, i-pad from the shop of appellant situated at Shop No.F-05, First Floor, Amma Tower, Saddar Karachi.

7. An important aspect of the case is that appellant was dishonestly receiving the stolen properties and habitually dealing in such properties, but record reflects that not a single person has come forward to claim that any of the 84 mobile phones and other recovered property belongs to him. In this respect, the Investigating Officer specifically stated *"During investigation, I received evidence regarding the FIRs which were lodged about robberies of the cell phones which were recovered from the possession of the accused. FIRs No.634/2021 u/s 380/34 PPC of P.S. Malir City, FIR No.503/2021 U.s 392/34 PPC of Ibrahim Hyderi were registered regarding the stealing and robbery of the recovered cell phones. It is correct to suggest that I did not name the owners/complainant of the above FIRs in the present case. It is correct to suggest that I did not associate I.Os and complainants of the FIRs which were lodged regarding theft and robberies of the cell phones which are case property. It is correct to suggest that I did not associate any person in the present case who claims ownership of the cell phone (s) of present case. I did not de-seal the case property at PS for showing the claimants who were coming at PS. I do not know regarding facts of FIR No.634/2021 and FIR No.503/2021 because the same were investigated by other I.Os."* From such piece of evidence, the prosecution has miserably failed to prove the recovery of theft or robbed properties alleged to be recovered from the appellant. The appellant has also placed on record copies of the judgment passed in both above referred cases, in which he has been acquitted by the competent Courts of law.

8. All the PWs are police officials and also there is no explanation furnished for not associating private persons from the vicinity to witness the alleged occurrence, hence there seems sheer violation of the mandatory provisions of Section 103 Cr.P.C., especially in the

circumstances in which according to prosecution theory the complainant had prior information. No doubt police witnesses are as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence inspiring and if such qualities were missing in their evidence, no conviction could be recorded on the basis of evidence of police witnesses. But here in this case, it is noted the number of contradictions in between the evidence of prosecution witnesses which are not ignorable. Above conduct shows that investigation has been carried out in a casual and stereotyped manner without making efforts to discover the actual facts/truth.

9. There are also several circumstances which created doubt in the prosecution case. It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace, but right. In this regard, reliance can be placed on case of 'Tariq Parvez v. The State' (1995 SCMR 1345), wherein it has been held by Supreme Court,

"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as matter of right".

10. A detailed examination of the prosecution evidence reveals inconsistencies among witnesses regarding the sequence of events. There is no independent corroboration, and the mashirs were police officials subordinate to the complainant, making their testimonies biased and unreliable. Moreover, the prosecution failed to recover any incriminating evidence from the appellant. These flaws severely undermine the prosecution's case and suggest it may have been fabricated to enhance the police's performance record. Therefore, the prosecution failed to prove its case beyond a reasonable doubt. According to established criminal jurisprudence, any reasonable doubt must benefit the accused.

11. In light of the above analysis, the prosecution has not succeeded in proving its case beyond a reasonable doubt. The appeal is accordingly

allowed. The conviction and sentences awarded by the trial court vide judgment dated 17.10.2023 are hereby set aside. The appellant is present on bail, his bail bond stands cancelled and surety discharged.

12. The appellant has claimed the case property in his statement under Section 342 Cr.P.C. and no one has come forward to claim the same, therefore, the same shall be restored to him on proper verification.

J U D G E

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