

~~Handwritten~~ Robbery Case : Caught red handed on the spot

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IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRL. APPEAL NO.425 OF 2022

Appellant: Ateeq-ur-Rehman s/o Abdul Rehman
through Mr. Zahoor-ul-Islam, Advocate.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Addl. Prosecutor General, Sindh

CRL. APPEAL NO.238 OF 2022

Appellant: Kamran s/o Muhammad Akram through
Mr. Muhammad Kamran Mirza, Advocate.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Addl. Prosecutor General, Sindh

Date of Hearing: 21.11.2024

Date of Announcement: 28.11.2024

JUDGMENT

By this common judgment, I intend to dispose of both the criminal appeals filed by Appellants Ateeq-ur-Rehman and Kamran respectively, who were convicted by the Xth Additional Sessions Judge-East, Karachi vide Judgment dated 02.04.2022 under Section 265-H(ii) Cr.P.C. and awarded 04 years Rigorous Imprisonment for the offence u/s.394/Cr.P.C. Benefit of Section 382-B Cr.P.C was also extended to the accused persons.

2. The brief facts of the case as per FIR lodged by the complainant Muhammad Yousuf at PS Saudabad, Karachi against the appellants in reference of crime No. 109 of 2018 under section 394/ 34 PPC wherein he stated that on 24.06.2018 he reached at the shop Rafi & Sons situated at Tanki Market, Malir, Karachi, for purchasing motor cycle on installment wherein other persons were also present. Suddenly four persons on two motor cycles entered into the shop and took them on gun pointation. Accused searched them and looted Rs.3,500/- on resistance of public present in the shop, the accused persons beat the manager of shop namely Shahid by hitting pistol butt due to which he received injury. Two accused persons ran away on their motor cycle while two accused persons along with their motor

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cycle were caught by public and beaten by them. Police reached on spot and rescued the accused persons from hands of public; on enquiry they disclosed their name as Kamran son of Muhammad Akram and Ateequr Rehman son of Abdul Rehman. ASI Muhammad Khan conducted personal search of accused Muhammad Kamran and recovered one 30 bore pistol without number loaded magazine containing four live bullets from right side of his shalwar. From personal search of accused Ateequr Rehman recovered one pistol without number loaded magazine containing four live bullets from right side of his shalwar, on further search robbed amount of Rs.800/ and one old mobile phone Lenovo were also recovered from his possession. Police arrested both the accused persons, who disclosed their escaped companion names as Ansar and Shani. Hence the aforesaid FIR was lodged against the 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 their trial.

4. In order to prove its case, the prosecution examined 05-PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. whereby they claimed that they were innocent. However, they did not give evidence on oath or call any witness in support of their defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out earlier in this judgment and hence, the appellants have filed these appeals against their convictions and sentences.

6. I have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, and the impugned judgment with their able assistance and have considered the relevant law.

7. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charge against the appellants for which they were convicted keeping in view that each criminal case is based on its own particular facts, circumstances and evidence for the following reasons;

(a) The FIR was lodged with promptitude within one and a half hours of the incident whereby the appellants are named in the FIR as robbing the shop and hitting PW Shahid Bashir over the head with a pistol during the robbery.

(b) The appellants after the robbery were immediately captured and beaten by members of the public at the shop before being handed over to the police who arrived whilst on patrol whereby unlicensed pistols were recovered from both of the accused and as such they were caught red handed on the spot and arrested by the police as per the evidence of the police and memo of arrest and recovery.

(c) The fact that the appellants were beaten by members of the public and were injured on the spot after the robbery is corroborated by their medical examination by PW 5 Dr. Shezade Ali whose evidence regarding the appellants injuries were consistent with the appellants receiving a beating. It cannot be lost sight of that today when the public witnesses a crime they often catch hold of and over power the suspect and give them a severe beating even to death unless they are rescued by the police as occurred in this case.

(d) The prosecution evidence is structured around two eye witnesses to the incident;

(i) PW 1 Shahid Bashir. According to his evidence he was present in the shop on the day and time of the incident and saw the appellants enter the shop and commit the robbery on show of arms. One of the accused hit him over the head with the butt of a pistol whilst he saw customers and members of the public over power, apprehend and beat the appellants who were rescued from the beating by the police when they arrived at the shop. He saw the police recover a pistol from each of the appellants and he was mashir of the memo of arrest and recovery.

This witness was a natural witness as he was manager of the shop. He was an independent witness who had had not seen and did not know either of the appellants before the incident. He had no enmity with the appellants and as such he had no reason to implicate them in a false case. He is named in the promptly lodged FIR. The fact that he was hit over the head by a pistol butt by one of the appellants is corroborated by the medical evidence of PW 5 Dr. Shezade Ali. Both the appellants were apprehended on the spot and as such there is no case of mistaken identity. He gave his S.161 Cr.PC statement with promptitude which was not materially improved on during his evidence. He gave his evidence in a natural manner and was not dented during his cross examination.

I can convict on the evidence of this sole eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **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). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witness to be of good quality and believe the same. There is also a second eye witness.

(ii) PW 3 Muhammed Yousaf. He is the complainant in the

case. According to his evidence he was present at the shop at the date and time of the incident as he had gone to buy a motor bike on installments. His evidence corroborates that of PW 1 Shahid Bashir in all material respects.

He was not a chance witness as he had gone to the shop to buy a motor bike on installments and as such was a natural witness. He was an independent witness who had not seen and did not know either of the appellants before the incident. He had no enmity with the appellants and as such he had no reason to implicate them in a false case. He names PW 1 in his promptly lodged FIR. He saw the robbery and saw PW 1 Shahid Bashir the shop manager being hit over the head with the pistol butt of one of the appellants by one of the appellants and the appellants being apprehended and beaten by the public before being arrested by the police on the spot where unlicensed pistols were recovered from each of them. He was mashir of the memo of arrest and recovery. Both the appellants were apprehended on the spot and as such there is no case of mistaken identity. He gave his S.154 Cr.PC statement which became the FIR with promptitude and no material improvements were made in respect of the same at the time of giving evidence. He gave his evidence in a natural manner and was not dented during his cross examination. Hence once again, as with PW 1 Shahid Bashir, I find his evidence to be trust worthy, reliable and confidence inspiring and I believe the same.

(e) Each of the pistols which were recovered from the appellants lead to a positive FSL report.

(f) That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the appellants and had any reason to falsely implicate them in this case for instance by foisting the pistols on them and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such I rely on the police witness evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474). PW 2 Muhammed Khan who was the police first responder at the crime scene fully corroborates the evidence of both of the above eye witnesses albeit it is hearsay evidence and inadmissible.

(g) That all the PWs 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 appellants. 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 time the appellants entered the shop, committed the robbery, hit PW 1 Shahid Bashir over the head with a pistol butt to them being apprehended and beaten by the public to the police arriving and rescuing them to the recovery of an unlicensed pistol from each of the appellants which lead to positive FSL reports.

(h) That the motive as per FIR and evidence on record is the fact that the appellant's wanted to rob the shop of PW 1 Shahid Bashir.

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(i) 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 is simply one of false implication however the appellants did not give evidence on oath or call any DW in support of their defence case. Thus, for the reasons mentioned above I disbelieve the defence case in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

8. Thus, based on the above discussion, I have no doubt that the prosecution has proved its case against both the appellants beyond a reasonable doubt as per the charge and dismiss both of their appeals.

9. The appellants are on bail and SHO PS Saudabad is directed to arrest the appellants and return them to custody to serve out the remainder of their sentences. A copy of this Judgment shall be sent to SSP East for compliance.