

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 535 of 2018

Appellant : Rajab Ali
through Ms. Abida Parveen Channer & Mr. Shamsheer
Khan, Advocates

Respondent : The State
through Mr. Talib Ali Memon, APG

Date of hearing : 10th November, 2022

JUDGMENT

Omar Sial, J.: A police mobile led by S.I. Sajid Mehmood was on patrol duty on 28.10.2013, when 2 individuals named Ammad Ashraf and Asim Gujjar came to him and informed him that 3 persons on a motorcycle had just robbed them of their valuables. The police party along with the 2 robbed victims (on their own motorcycle) chased the robbers. This led to a shoot-out between the robbers and the police. One of the robbers fell of the motorcycle whereas 2 of his companions managed to make their escape good. The fallen robber, who was later identified as Rajab Ali, was arrested on the spot and an unlicensed 0.30 bore pistol was recovered from his possession. Rs. 10,000 and a mobile phone which had been snatched from Ammad Ashraf were also recovered. The valuables which had been snatched from Asim Gujjar had been taken away by the 2 robbers who managed to escape. 2 cases were filed against Rajab Ali. These were: F.I.R. No. 339 of 2013 registered under sections 392, 353, 324 and 34 P.P.C., and, F.I.R. No. 340 of 2013 registered under section 23(1)(a) of the Sindh Arms Act, 2013 at the Sukhan police station.

F.I.R. No. 340 of 2013 registered under section 23(1)(a) of the Sindh Arms Act, 2013

2. Rajab Ali pleaded not guilty and claimed trial. PW-1 A.S.I. Sajid Mehmood was the police officer who arrested the appellant and effected recovery. PW-2 H.C. Sajid Ahmed was a witness to the arrest and recovery as well as the inspection of the place of incident. PW-3 Ammad Ashraf was one of the victims of the crime as well as the complainant. PW-4 S.I. Zakirullah was the investigating officer of the case. In his section 342 Cr.P.C. statement Rajab Ali said that he was

innocent. The learned trial judge on 05.12.2017 convicted the appellant under section 23(1)(a) of the Sindh Arms Act, 2013 to 4 years in prison as well as pay a fine of Rs. 20,000 and in he did not pay the fine he would have to spend another 3 months in prison. This appeal has been filed by the appellant against his conviction in the arms case.

3. Learned counsel has argued that even though the prosecution claims that there was a shoot-out, the investigating officer had not recovered any empties from the place of incident; the recovered pistol was sent for forensic examination after 3 days of the incident and that the same had been foisted upon him. The learned APG supported the impugned judgment. My observations and findings are as follows.

- (i) The appellant was caught red handed on the spot while trying to flee. The mobile phone and cash robbed from the complainant were recovered from his possession on the spot along with the 0.3 bore pistol when he was apprehended. No enmity or ill-will against S.I. Sajid Mehmood or the private complainant Ammad Ashraf was either argued or is reflected from the record. The police mobile involved in the encounter, with registration no. SP-3746 was sent for forensic examination, and on 17.01.2013 the forensic examiner opined that it had 2 bullet damage on its body.
- (ii) As regards the learned counsel's argument that no empties were collected from the place of incident, the record reveals that she is not correct in her assertion. The memo of inspection of the place of incident which was prepared on 28.10.2013 shows that the police had recovered 2 empties of a .30 bore pistol and 4 empties of an SMG from the place of incident.
- (iii) The empties of the 0.3 bore pistol were sent to the forensics laboratory for analysis and the laboratory vide its report dated 06.01.2014 opined that the empties found from the scene of the offence matched with the weapon recovered. The pistol seized had a number 33012273 written on it when seized. The laboratory report also shows that the pistol sent to it for analysis also had the same number written on it. I notice however that the appellant was not confronted with the forensic report when his statement under section 342 Cr.P.C. was recorded. As such the fact that that the empties recovered from the place of incident matched the weapon that

was recovered from the appellant, cannot be used as evidence against him. Be that as it may, the appellant has got the benefit of this lapse on the prosecution's part, in the main case that originated from this incident. The prosecution witnesses had no enmity or ill will towards him. A pistol was recovered from his possession when he was apprehended red handed when trying to flee after committing a robbery. He failed to produce a license for the weapon. Keeping in view the appellant's healthy involvement with crime since 2009, which has seen him involved in several cases of kidnapping and robbery and escaping from police custody from an ATC Court, I am not inclined to show any leniency to him.

- (iv) I have been informed by the learned counsel that the appellant has completed his sentence but that he is still in jail confined in some other case.
- (v) The appeal is dismissed.

JUDGE