

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S-91 of 2021  
Criminal Appeal No.S-94 of 2021  
Criminal Appeal No.S-96 of 2021

Date of hearings: 16.09.2022 & 23.09.2022  
Date of decision: 23.09.2022  
Appellants: Ashraf, Sikander Babar and Waqar Shah,  
Through M/s Irfan Ali Khaskheli, Shoukat Ali  
Kaka, Mir Murtaza Abro, advocates.  
The State: Through Ms. Safa Hisbani, Assistant PG.

JUDGMENT

**MUHAMMAD IQBAL KALHORO**, J:- Appellants booked in Crime No.26 of 2020 registered at P.S SITE Hyderabad under Section 395 PPC, against allegations of robbing complainant of cash of Rs.3,25,000/-, mobile phone and PW Lal Bux Abro of Rs.50,000/-, available with PWs in his shop situated at Indus Pahari Road near Boulevard Mall SITE Hyderabad on 03.06.2020, have been convicted and sentenced to suffer R.I for 07 years and to pay fine of Rs.50,000/- each, in default, to suffer R.I for 03 months more with benefit of Section 382-B CrPC vide judgment dated 31.05.2021 passed by learned Vth Additional Sessions Judge, Hyderabad in Sessions Case No.1218 of 2020, which they have challenged by means of the appeals in hand.

2. In the trial, prosecution has examined as many as 10(ten) PWs who have produced necessary documents including FIR, memos, identification parade and relevant entries etc. Appellants were confronted with such evidence U/s 342 Cr.P.C for their explanation and rebuttal, if any, which they have denied but have not examined themselves on oath nor led any evidence in defence.

3. After appreciating points of views of both the parties, learned trial Court has convicted the appellants in terms as stated above.

4. Learned Defence Counsel have submitted that there are material contradictions in evidence of the prosecution witnesses; that identification parade of the appellants Sikander and Waqar Shah were

conducted after 07 days and 20 days of their arrest and in memo of identification parade the appellants have disclosed that the witnesses had already seen them, therefore, the importance of such id. parade is not above the board; complainant is the main witness but strangely he was not called for id. parade nor his staff available in his shop; PW-03 Kirshan in his cross-examination has stated that accused were wearing corona mask on their faces, whereas the other witnesses have taken a different view on this point but in any case in view of such disclosure the identification parade has lost its evidentiary value; and that there is delay of three days in registration of FIR. In support of his contentions, learned counsel has relied upon 2022 SCMR 393, 2020 YLR Note 103, 2020 YLR 256, 2019 PCrLJ Note 156, 2018 MLD 751, 2010 SCMR 385, AND 2011 YLR 2632.

5. Learned Assistant PG has supported the impugned judgment.

6. I have heard the parties and perused material available on record. PW-1/complainant has stated in his evidence that four accused had entered his shop, PWs-2, 4 and 5 have stated that three accused persons had entered the shop, PW-3 has stated that two accused came inside the shop, and PW-6 has stated that four accused duly armed came inside the shop. Further, PW-2 has stated that he did not identify the accused persons as his face was down, PW3 in his cross examination has stated that accused persons were wearing corona mask on their faces, PWs-4 & 5 have stated in their evidence that they cannot say whether the accused are same or not. PW-6 has stated that accused were with open faces. PW-1 has stated in his evidence that accused remained in his shop for about 5-10 minutes, whereas, PW-2 has stated in his cross examination that accused remained in the shop for about 1½ minutes.

7. Further, although PW-1 (complainant) has stated in his evidence that four accused persons entered his shop, but in his further statement he has stated five accused persons had jointly conducted robbery in his shop. He has further stated that he came to know name of accused Sikandar Babar and others, but others' name he does not remember. PW-6 has stated that all four accused were duly armed with weapons but none of others witnesses have confirmed this fact. He has further stated that police had not recorded his statement. In identification parade, (Ex-10/A) he has stated that on the day of

incident the accused (Waqar Shah) was standing along with motorbike while other four accused persons committed robbery from him, whereas, in id. parade, (Ex.10/B), he has stated that on the day of incident accused Sikander was along with four other culprits and he committed robbery from him. A note on the identification parade displays that accused persons had stated that the PW Lal Bux had visited the police station where SHO had showed them to him who had taken their pictures. There is absolutely no evidence, in respect of accused Ashraf and he was implicated in this case on the basis of statement of co-accused.

8. All these discrepancies in the evidence of witnesses show that the prosecution has not been able to prove the case against appellants beyond a reasonable doubt. Apart from it, although the accused Sikander and Waqar Shah were arrested on 11.07.2020 after 01 month and 08 days of incident but no robbed article was recovered from them. It is a trite law that when there is a single circumstance creating a reasonable doubt in the prudent mind, the benefit of which would be extended to the accused not as a matter of grace but as a matter of right. In view thereof, the appeals are allowed, and the appellants are acquitted on benefit of doubt of the charge. The convictions and sentences awarded to them vide impugned judgment are set aside.

9. Consequently, these appeals are allowed. The appellants shall be released forthwith if not required in any other custody case. These are the reasons of short order dated 23.09.2022.

10. The appeals are accordingly disposed of.

JUDGE