

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 627 of 2022
Criminal Jail Appeal No. 782 of 2022

Appellants : Yasir Butt and Haroon
through Mr. Badar Hussain, Advocate

Respondent : The State
through Ms. Robina Qadir, Addl.P.G.

Date of hearing : 20th February, 2023

JUDGMENT

Omar Sial, J. Owais Dahir on 26.08.2021 went to the Baloch Colony police station and reported that he along with 2 friends of his were going home on a motorcycle on 23.08.2021 when they were intercepted by 3 men on two motorcycles. Owais and his friends were robbed of their respective mobile phones as well as Rs. 35,000 cash that they carried at that time. Owais stated that he could identify the 3 men if he saw them again but that they looked of Baloch origins. F.I.R. No 344 of 2021 under sections 397 and 34 P.P.C. was registered at 4:30 p.m. The 3 phones which were robbed were (i) Samsung Grand Prime (ii) Samsung Note 8 and (iii) I-phone 8.

2. On 30.08.2021 the Baloch Colony police station arrested some boys for possessing unlicensed weapons. 2 of those boys were Haroon and Yasir. The I-phone 8 robbed from the victims of the present case was recovered from Haroon. Owais and Ibrahim identified Haroon and Yasir as the 2 of the 3 boys who had robbed them. The I-phone 8 was identified by both, Owais Dahir and Ibrahim Malik, as that which was snatched from Danial. This recovery led the police to the identity of the 3rd accused involved in the present case. He was a boy by the name of Rohail.

3. On 02.09.2021, Yasir, while being interrogated told the investigators that he will take them to the place where he had kept one of the stolen

phones, being the Samsung Grand Prime. Yasir took the police party to his home from where the recovery was made from the top of a cupboard.

4. Both, Yasir and Haroon, pleaded not guilty and claimed trial. At trial the prosecution examined 5 witnesses to prove its case. **PW-1 A.S.I. Mehboob Elahi** was the policeman who registered the F.I.R. in this case. **PW-2 H.C. Mubarak Shah** witnessed the recovery of the Samsung Grand Prime phone from Yasir's house and upon his pointation. **PW-3 Owais Dahir** was one of the victims of the robber and was also the person who lodged the F.I.R. **PW-4 Ibrahim Malik** was also one of the victims of the robbery. **PW-5 S.I. Allah Rakhio Nadeem Gabol** was the investigating officer of the case.

5. In their respective section 342 Cr.P.C. statements, both the accused recorded that they had been falsely implicated in the case. They believed that all the witnesses had testified against them at the behest of the police. Neither did they examine themselves on oath nor did they want to examine any witness in their defence.

6. At the end of the trial, the learned 10th Additional Sessions Judge, Karachi South on 18.10.2022 convicted both the accused for an offence punishable under section 397 P.P.C. and sentenced them to 7 years imprisonment.

7. The learned counsel for the appellants has focused his argument entirely on the fact that there are contradictions in the prosecution evidence regarding who the I-phone 8 was owned by, how was it identified and where it was recovered from. As regards the recovery of the Samsung Grand Prime phone, learned counsel was of the view that the recovery had not been evidenced by any independent person and accordingly the same had been foisted upon the accused. To the contrary the learned Addl.P.G. supported the impugned judgment. None appeared on behalf of the complainant in spite of notices having been sent. I have heard the counsels and re-appraised the evidence. My observations and findings are as follows.

8. I have first looked at what the learned counsel's ground in support of the appeal was. The 3 phones that were robbed were (i) Samsung Grand Prime owned by Owais Dahir (ii) Samsung Note 8 owned by Ibrahim Malik and (iii) I-phone 8 owned by Danial. Both Owais and Ibrahim had identified the 2 accused as being 2 of the robbers. While Danial did not come to record his testimony or identify the robbers, the I-phone 8 recovered from Haroon was identified by Owais and Ibrahim as being that of their friend Danial. The prosecution case is that on 30.08.2021, Yasir and Haroon were both arrested in a separate crime within the remits of the Baloch Colony police, and that the I-phone 8 robbed from Danial was recovered from Haroon at the time of their arrest. The contradiction in the prosecution case the learned counsel for the accused relies upon that is that in spite of the police claim that the I-phone 8 was recovered from Haroon within the Baloch Colony area when Yasir and Haroon were both arrested, prosecution witness Ibrahim Malik (PW-4) testified that he had gone to Sohrab Goth with the investigation officer from where a person was arrested and brought to the police station. Learned counsel argued that how can the accused be arrested from Baloch Colony when Ibrahim Malik and the investigating officer had gone to Sohrab Goth to make an arrest. He is correct; however, Ibrahim Malik did not say in his testimony that either Yasir or Haroon were arrested from Sohrab Goth. It is pertinent to mention that several boys had been picked up on 30.08.2021 by the police and brought to the police station. It was at the police station that the 2 victims had identified the accused and the phones recovered. What Ibrahim Malik did say at trial was that that the I-phone 8 was recovered from the accused who was arrested from Sohrab Goth but who was not present in court when he had testified. The contradiction the learned counsel points out is indeed correct. I am however not convinced that this lacuna in the prosecution case is sufficient to upset the conviction given to the accused Haroon. Speaking hypothetically, even if the I-phone 8 was recovered from Sohrab Goth and not Baloch Colony as the police claims, it will not overshadow the reliability and weight of the testimonies recorded by the 2

victims of the crime that Haroon and Yasir were indeed 2 out of the 3 persons who had robbed them. Had the phone not even been recovered, they would still have a case to answer in light of the identification made by Owais Dahir and Ibrahim Malik. Indeed, the learned trial judge in paragraph 25 of his judgment had come to the same conclusion. It is a conclusion that I wholeheartedly endorse.

9. Ibrahim Malik was a 16 year old student whereas Owais Dahir was a 17 year old student. Both had absolutely no reason to falsely implicate the 2 accused. Had the police wanted to introduce false witnesses at trial, the police would have also surely gone to a person who was at least an adult to get him to falsely testify. I find the testimonies of the 2 eye witnesses to have a ring of truth to them and the same are trust worthy and confidence inspiring. After having gone through the evidence produced at trial, I find no reason to interfere with the judgment of the learned trial court.

10. Appeals stand dismissed.

JUDGE