

**HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Cr. Appeal No.S-157 of 2022**  
[Irfan Ali & another versus The State]

**Cr. Appeal No.S-158 of 2022**  
[Irfan Ali versus The State]

Appellants : Through Mr. Mumtaz Alam Leghari advocate  
The State : Through Mr. Siraj Ahmed Bijarani Asstt: P.G  
Date of hearing &  
decision : 14.04.2023

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J.-** Both the appellants were charged and tried by learned Additional Sessions Judge-I / MCTC Dadu in F.I.R No. 17 of 2021 registered at Police Station Phulji for offenses punishable under Sections 397 & 392 PPC and vide judgment dated 10.03.2022, they were convicted and sentenced to suffer rigorous imprisonment for five (05) years with a fine of Rs.50,000/- each and in case of failure, they were further directed to suffer simple imprisonment for four (04) months.

2. Besides, appellant Irfan Ali was also charged and tried in an offshoot case bearing F.I.R No.18 of 2021 registered under Section 25 of Sindh Arms Act, 2013, at the same police station and vide judgment of even date, he was also convicted and sentenced to suffer rigorous imprisonment for five (05) years and to pay a fine of Rs.50,000/- and in case of failure, he was directed to suffer further simple imprisonment for four (04) months.

3. The facts of the matter, in brief, are that on 09.06.2021 Complainant ASI Khuda Bux Solangi reported that on 08.06.2021, he along with his subordinate staff was on patrolling duty; during patrolling, when they reached Dadu to Phulji linked road, one Fayaz son of Ameer Bux Lakho resident of Qalandarabad Dadu met them and disclosed about his robbed articles with the narration that at about 2000 hours two unknown persons, duly armed with pistols, committed robbery of Rikshaw Motorcycle from him and fled away; on such discloser, they rushed to Jara water and found two persons fallen on ground while two other persons were standing; on

seeing the police party the persons standing escaped away, out of them police party identified one person to be Razzak having a gun in his hand; they also saw one Rikshaw Motorcycle available and the site. Police party apprehended the appellants, out of them one disclosed his name as Irfan son of Ali Sher Abbasi, having a firearm injury on his left hand and another person disclosed his name as Mehtab son of Daim Kalhoru; the appellants admitted their guilt with the disclosure that they had robbed Rikshaw Motorcycle from Fayaz, however the other two unknown culprits attempted to rob the subject Rikshaw Motorcycle from them and on their resistance they opened fire upon them and escaped away, police arrested the appellants and recovered one 30 bore pistol from the fold of Shalwar of appellant Irfan and finally aforesaid FIRs were lodged against them under Sections 397 & 392 PPC.

4. After usual investigation, challan was submitted before the concerned Magistrate, who took cognizance of the matter and sent the case papers to learned Sessions Court for further proceedings. The trial Court after completing the proceedings against absconding accused Razzak framed the Charge against present appellants at **Ex.05**, to which they pleaded not guilty and claimed trial vide their pleas at **Ex.05/A** and **05/B**.

5. To prove the Charge, the prosecution examined three police witnesses at **Ex.06** to **08**, who produced certain documents at **Ex.06/A** to **08/C**. The prosecution closed its side at **Ex.09** and Statements of appellants were recorded under Section 342 Cr. P.C. at **Ex.10** and **11**, wherein they denied the allegations of prosecution witnesses. The appellants did not examine themselves on Oath; however, they examined Fayaz Lakho whose Rikshaw was robbed in their defense at **Ex.12**. Finally learned trial Court after hearing the arguments of the parties convicted and sentenced the appellants, as mentioned supra.

6. The main ground of the appellants is that Fayaz Lakho whose Rikshaw was robbed has not recognized them as actual culprits of said crime, therefore they are entitled to the benefit of doubt and they may be acquitted from the aforesaid charge.

7. Mr. Mumtaz Alam Leghari learned counsel for appellants argued that the impugned judgments are against the law and facts; that no such incident had taken place and that the entire story is managed and concocted by the police; that the alleged recovery has been foisted upon the appellant; that

prosecution did not examine and / or made Fayaz as Complainant; however, said Fayaz Lakho was examined by the appellants in their defense, who deposed that present appellants were not the same culprits, even then the trial Court awarded conviction to the present appellants; that on this ground alone the conviction is not sustainable. Learned counsel prayed that the impugned judgments may be set aside and the appellants may be acquitted of the charge.

8. On the other hand learned APG supported the impugned judgments and prayed for dismissal of the appeals.

9. I have heard the arguments of the parties and perused the record with their assistance.

10. The question is whether on 9.6.2021 the appellants committed the robbery of Rickshaw Motorcycle from Fayaz Lakho and were rightly tried and convicted by the trial court vide impugned judgment dated 10.03.2022.

11. Primarily the entire case of the prosecution rests upon the statement of victim. It appears from the statement of Fayaz Lakho (victim) who deposed that the appellants were/are not the actual culprits who robbed his Rickshaw Motorcycle on 9.6.2021. In other words, he did not depose against the appellants.

12. If this is the stance of the victim, the question arises as to why he was not made Complainant of the FIR and as to why police lodged the FIR on their own accord though they were not the eye-witness of the incident of robbery. However, the case lodged against the appellants creates doubt about the credibility and authenticity of involvement of the appellants in the aforesaid crime, therefore the same evidence relied upon by the trial court suffers from grave illegality and renders the prosecution story completely unreliable, having no evidentiary value in the eyes of law.

13. It is settled principle of law that burden is always upon the prosecution to prove the case beyond shadow of a doubt. The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt; there doesn't need to be many circumstances creating doubts. If there is one circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then the accused will be entitled to the benefit not as a matter of grace but as a matter of right.

14. Keeping in view the above, I am of the firm view that the Presiding Officer of the trial Court acted erroneously in the matter with misconception, misinterpretation, misreading, and non-reading of evidence on record and convicted the appellants purely based on the evidence of police officials who were not the eyewitnesses of the aforesaid crime, additionally, Fayaz Lakho deposed that the appellants were not the same culprits who robbed his Rickshaw Motorcycle on 9.6.2021.

15. For the foregoing reasons, I am of the considered view that the prosecution has miserably failed to produce trustworthy and reliable evidence connecting the appellants with the commission of aforesaid offenses. The prosecution did not prove its case beyond shadow of doubt against the appellants as no trustworthy and inspiring confidence evidence was produced during trial. Consequently, I allow these appeals, set-aside the impugned judgments, and acquit the appellants from the above charges. The appellants are on bail, their bail bonds stood discharged from the above cases. Since these appeals are allowed; therefore, the listed applications are also disposed of in the above terms.

JUDGE

Sajjad Ali Jessar