

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 802 of 2022

Appellant: Muhammad Sami through Syed Salman Ali,
advocate

The State: Mr. Zafar Ahmed Khan, Additional
Prosecutor General Sindh

Date of hearing: 09.08.2023

Date of judgment: 09.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with rest of the culprits robbed complainant Muhammad Mehroze of his cell phone, LED and cash worth Rs.8000/- for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 397 PPC and sentenced to undergo rigorous imprisonment for 07 years and to pay fine of Rs.5,000/- and in default whereof to undergo simple imprisonment for 01 week with benefit of Section 382(b) Cr.P.C by learned Vth-Additional Sessions Judge, Karachi Central vide judgment dated 30.11.2011, which he has impugned before this Court by preferring the instant Crl. Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police; the FIR of the incident has been lodged with unexplained delay of more than 01 year and evidence of the PWs being doubtful in its character has been believed by the learned trial Court without lawful justification, therefore, the appellant is entitled to be acquitted by extending him benefit of doubt, who even otherwise is about to complete his jail term, which is opposed by learned Addl. PG for the State by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

3. Heard arguments and perused the record.

4. The lodgment of the FIR by the complainant with delay of more than 01 year prima facie suggests deliberation and consultation. As per I.O/ASI Kifayat Hussain, the appellant on having been arrested

in some other case allegedly admitted before him to have committed the present incident. If for the sake of arguments, it is believed that such confession was actually made by the appellant before the above-named police officer even then same in terms of Article 39(g) of Qanun-e-Shahadat Order, 1984, could not be used against the appellant as evidence. The identity of the appellant by the complainant at the police station without involvement of the Magistrate could hardly be relied upon to base conviction. No robbed property is recovered from the appellant. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond shadow of reasonable doubt.

5. In case of *Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)*, it was observed by the Apex Court that;

"Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate".

6. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Hon'ble Apex court that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

7. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant by way of impugned judgment are set aside, consequently, he is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

8. The instant Criminal Appeal is disposed of accordingly.

JUDGE