

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 607 of 2022

Appellant: Hukum Khan through Mr. Muneer Ahmed Gilal, advocate

The State: Mr. Khadim Hussain Khuharo, Additional Prosecutor General Sindh

Date of hearing: 14.09.2023

Date of judgment: 14.09.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is alleged that the appellant during course of robbery caused knife injury to PW Muhammad Rafiq on his abdomen, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 394 PPC and sentenced to undergo rigorous imprisonment for 05 years with fine of Rs.10,000/- and in default whereof to undergo rigorous imprisonment for 03 months with benefit of section 382(b) Cr.P.C by learned IIIrd-Additional Sessions Judge, Karachi Central vide judgment dated 26.09.2022, which he has impugned before this Court by preferring the instant Criminal 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 in a blind FIR and evidence of the PWs being doubtful in its character has been believed by the learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt who even otherwise, as per him, inclusive of remission has already served out more than 03 years of the sentence, which is opposed by learned Addl. PG for the State by contending that the offence which the appellant has committed is affecting the society at large.

3. Heard arguments and perused the record.

4. Complainant Muhammad Javed Iqbal is not eyewitness to the incident, therefore, his evidence hardly lend support to the case of prosecution. The identity of the appellant by PW Muhammad Rafiq at trial does not fulfill the requirements of law. As per HC Muhammad Afzal, on arrest, the appellant disclosed before him to have committed the alleged offence; such disclosure, if any, in terms of Article 39 of Qanun-e-Shahadat Order, 1984, could not be used against him as evidence. Evidence of I.O/SIP Khadim Hussain who conducted and completed the investigation of the present case is of little help to the case of prosecution to maintain conviction. The appellant has pleaded innocence during course of his examination under Section 342 Cr.P.C; such plea on his part could not be lost sight of. 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 *Asghar Ali @ Saba vs. the State and others* (1992 SCMR 2088), it has been held by the Apex Court that;

*"The identification in Court of a person produced as an accused months after the event could not satisfy the requirements of law for proving the identity of the culprit."*

6. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the 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**

Nadir\*