

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 642 of 2023

Appellant: Hussain Raza @ Onash through Mr. Habib-ur-Rehman Jiskani, advocate

The State: Ms. Seema Zaidi, Additional Prosecutor General for the State

Date of hearing: 15.05.2024

Date of judgment: 15.05.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with one more culprit robbed Mst. Ashmeer of her cell phone and rupees three hundred, for which the present case was registered. After the trial, he was convicted u/s. 397 PPC and sentenced to undergo rigorous imprisonment for 07 years, with the benefit of Section 382(b) Cr. P.C by learned IInd-Additional Sessions Judge, Karachi Central vide judgment dated 10.10.2023, which he has impugned before this Court by way of the instant Criminal Jail Appeal.

2. It is contended by learned counsel for the appellant that he has been convicted and sentenced based on misappraisal of the evidence; therefore, he is entitled to his acquittal by extending him the benefit of the doubt, which is opposed by learned Addl. PG for the State by contending that on arrest from the appellant has been secured robbed property.

3. Heard arguments and perused the record.

4. Complainant Mst. Shireen Khatija is not an eyewitness to the incident; therefore, her evidence is of little help to the case of the prosecution. On arrest, the appellant has not been subjected to an identification parade through the Magistrate, therefore, his identity by P.W Mst. Ashmeer at police station or at trial does not satisfy the requirement of law. The appellant is said to have been arrested by HC Sher Zaman under a memo prepared by him in the presence of P.W/Mashir Pathan Khan after an encounter in injured condition. By

way of such encounter, no police personnel sustained any injury, which appears to be surprising. The unlicensed pistol of 9mm bore is alleged to have been foisted upon the appellant by police. I.O/SIP Zulfiqar Ali Shah has not been examined by the prosecution on account of his death, therefore, the identity of his signatures by ASI Rashid Hussain on memos etc. could hardly satisfy the requirement of law. The appellant in his examination u/s 342 Cr. PC has pleaded innocence; his such plea could not be overlooked in the circumstances of the present case.

5. The conclusion which could be drawn from the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond a shadow of reasonable doubt and to such benefit he is found entitled.

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. Under the discussed circumstances, the conviction and sentence awarded to the appellant by way of impugned judgment are set aside, consequently, he is acquitted of the offence of robbery 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 Jail Appeal is disposed of accordingly.

JUDGE