

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Appeal No.287 of 2024

Date	Order .with signature of Judge
------	--------------------------------

Appellant: Muhammad Zahid ur Rehman through Ms. Gulqadam Malik, advocate.

Respondent: State through Ms. Rubina Qadir, APG.

Date of hearing and
Announcement of judgment: 15.10.2024.

J U D G M E N T

MUHAMMAD IQBAL KALHORO J: Appellant has been convicted and sentenced u/s 392 PPC to suffer R.I. for 05 years with fine of Rs.25000, in case of default to suffer SI for three months more and u/s 397 PPC to suffer R.I. for 07 years with fine of Rs.50,000/-, in case of default to suffer SI for three months more vide impugned judgment dated 13.02.2024 rendered by learned IV-Additional Sessions judge, Karachi West in Crime No.10/2023 U/s 392,397, 34 PPC of P.S. SITE-B Karachi.

2. As per brief facts of the case, complainant is Manager of Ali enterprises Telenor Franchise situated at Ghani Chorangi, SITE, Karachi. He is not the eye-witness of the incident but has submitted that on 16.01.2024 when he was present at Shershah Chowk at about 4.12 p.m. he received a phone call from his accountant Ahmed regarding dacoity committed in the Franchise. On such information, he reached the Franchise, where he saw a mob of people and a police mobile already available with one injured robber lying on the ground alongwith his motorcycle, who was taken into custody by the police along with the pistol. He made an enquiry from the staff and was told that at about 3.45 p.m. three armed dacoits wearing shalwar Qameez entered the Franchise, smashed the furniture and robbed Rs.4,70,000/- including personal cash and mobile phone from the staff and security guards. After the dacoity, when the culprits were escaping, their companion who were standing outside made two fires from their pistols to cause harassment to security guard, who however still managed to make firing from his 9mm pistol injuring the appellant, who when fell down as a result, was apprehended by the people at the spot. Police officer ASI Zulfiqar Ali, who was patrolling the area, reached the spot and

arrested him at the site alongwith the pistol. Hence present FIR and another case for possessing an unlicensed pistol were registered against him. After completion of investigation, the charge sheet against the appellant was filed for his trial.

3. In the trial, prosecution examined 07 witnesses including the complainant, the staff of Franchise and relevant police officials alongwith I.O. of the case, who have submitted all the necessary documents including FSL report, medical report of the accused etc. Statement of appellant thereafter was recorded u/s 342 Cr.P.C in which he has denied the allegations against him and has pleaded his innocence.

4. After hearing the prosecution and the accused, learned trial court has recorded conviction and sentence to the appellant in the terms as stated above which he has challenged by means of this appeal.

5. I have heard learned defence counsel and learned APG as well as complainant, who is present in person. Learned defence counsel has submitted that there are a number of contradictions in the prosecution case; the witnesses have not supported each other; no one from the public was made a witness in the case; the distances qua place of incident and arrest of appellant described by the witnesses are different and don't inspire confidence; that against the appellant no criminal record is available and he was not arrested from the spot; and that even names of other accused are not mentioned in the FIR. The prosecution has failed to prove the case, and appellant may be acquitted.

6. On the other hand, learned APG and complainant have supported the impugned judgment.

7. The prosecution as a first witness has examined complainant P.W.1 Muhammad Nasir, who has reiterated story of FIR in his evidence and has produced FIR to support his version. Prosecution has examined P.W.2 Yousif Khan. He is the security guard from whose firing appellant was injured. He has also materially supported the complainant and in detail has narrated the incident in his examination-in-chief. He has submitted that when he was performing duty on the day of incident viz. 16.01.2024, three armed persons covering their faces barged into the office of the franchise and on the show of weapons, committed dacoity of Rs.4,70,000/-, mobile phones and personal belongings of the staff. He has also deposed that culprits had beaten the staff.

According to his evidence, after committing dacoity, the culprits left and locked the office from outside but meanwhile one customer came after unlocking the office. Hence, he followed the culprits, and made firing from his weapon injuring the appellant resultantly, who was subsequently arrested by the police alongwith the pistol and a stolen motorcycle. He has produced relevant photographs of the motorcycle.

8. Prosecution examined Ms. Sundas, Customer Relation Officer (CRO), Telenor Franchise Site as P.W.3. She has also supported the case of prosecution and has given a comprehensive detail of the story of the incident pointing a finger to the appellant as one of the culprits of robbery, who was injured from the security guard's firing and was arrested by the police who had reached the spot. Mst. Fatima has been examined as P.W.4. She is working in the Franchise as CRM. She has also supported versions of the prosecution case in toto. She has described the incident as revealed by the complainant and other witnesses.

9. In all, the prosecution has examined three eyewitnesses in this case. All three eyewitnesses have supported the version of the prosecution case regarding dacoity from the Franchise, receiving injury by the appellant from firing of the security guard, his arrest from the spot with a 9mm pistol. Prosecution has then examined SIP Zulfiqar Ali as P.W.5. he is the police officer, who was patrolling the area and on hearing fire shots had reached the spot and had found the appellant lying in injured condition alongwith the pistol and had arrested him. He had also collected motorcycle and the pistol alongwith bullets. He had enquired about the incident from the complainant and other witnesses and prepared such memo of arrest and recovery at the spot. Subsequently, he brought the appellant at P.S, where he had registered the FIRs against him.

10. After a preliminary investigation conducted by him, he had handed over the property as well as accused to the I.O. who had recorded his statement u/s 161 Cr.P.C and the statements of other witnesses during investigation. He has produced all the necessary papers including copies of daily diary to show his movement from P.S to the place of incident and back to P.S.

11. Prosecution has examined P.W.6 Muhammad Saleem, who is the owner of the franchise. He is not the eyewitness and he has narrated the story told to him by his staff. He has further confirmed that he had authorized his Manager

Nasir/complainant for registration of FIR by giving him necessary authority letter. Prosecution has examined I.O. as a last witness. The Investigating Officer in his deposition has stated that he had received investigation alongwith a copy of FIR, medical report of accused, relevant entries, recovered pistol from the security guard and had recorded statements of the police officials, who had reached the spot. He has further stated that after receiving investigation he had inspected the place of incident, recorded statements of witnesses, prepared necessary documents and on culmination of investigation had submitted challan in the court for a trial. He has produced photographs of Franchise, place of incident and entries of Daily Diary, positive FSL report of the pistol recovered from the appellant, the photographs of appellant getting injured from the firing of security guard, falling down from his motorcycle and being apprehended by the people.

12. After the prosecution evidence, statement of appellant was recorded u/s 342 Cr.P.C wherein he has simply denied the prosecution case and has pleaded that he had gone to purchase Telenor sim from the Franchise where he had exchanged hot words with the staff , hence he was injured and made accused in this case.

13. With the assistance of learned counsel for parties, I have gone through the evidence of above witnesses and have found no shocking contradiction in cross-examination to give its benefit to the appellant. Besides complainant, who is not the eyewitness, prosecution has examined three independent eyewitnesses, two of them are female, who have no ill will against the appellant. All the witnesses have confirmed the story of FIR, arrest of the appellant and his being injured from the firing of the security guard after dacoity. Further, this story is confirmed by the I.O. in his evidence. P.W. SIP Zulfiqar Ali, who had reached the spot has also supported the circumstantial evidence of commission of the dacoity from Telenor Franchise by the appellant and his accomplices, who however managed to escape from the spot and subsequent arrest of the appellant in the injured condition. No worthwhile discrepancy, undermining the prosecution case to the extent of giving its benefit to the appellant has been pointed out in defence. Evidence of the prosecution witnesses is consistent and complimentary to each other and has not been shattered in the lengthy cross-examination. Prosecution by examining seven witnesses has presented the case fully for a consideration.

The appellant was arrested from the spot alongwith an unlicensed pistol regarding which he could not offer any explanation.

14. Although, the appellant has claimed to have been falsely implicated in this case but no record has been produced by him in defence to doubt the prosecution story and believe him instead. The prosecution story is based not only on the version of I.O., but narration revealed by the eyewitnesses who have got no personal ill will or enmity with the appellant. They are the staff of the Franchise with no axe to grind against the appellant. Appellant's arrest from spot in injured condition alongwith unlicensed weapon is yet another circumstantial evidence pointing out to his guilt.

15. I have seen reasoning in the impugned judgment by the trial court while holding the appellant guilty of the offence as above, I find no illegality or any mis-appreciation or non-appreciation of evidence by the trial court. The trial court has rightly appreciated the prosecution evidence which is natural, consistent and without any material contradiction. After successful discharge of burden by the prosecution, there was no option left to the trial court but to convict the appellant and sentence him in the terms as stated above. Because nothing to compare the said story with and clouding its certitude was put forward by the accused in defence. No extra ordinary circumstances or a point creating doubt over the prosecution story has been revealed in the arguments by learned counsel for appellant to extend its benefit to the appellant. The minor discrepancies do come in the account furnished by the different people /witnesses of the same incident when examined in the court, but it will not imply that the whole prosecution case is doubtful or the story has been contrived.

16. In view of the above, I find no merits in the instant appeal and accordingly dismiss it.

The Appeal stands dismissed in the above terms.

These are the reasons of my short order passed on 15.10.2024, whereby this appeal was dismissed.

JUDGE