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Dishonest improvement in evidence

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CR. APPEAL NO.478 OF 2024

Appellant: Haroon s/o Noor Alam through
Mr. Qamar Iqbal, Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Addl. Prosecutor General,
Sindh

Date of Hearing: 22.10.2024

Date of Announcement: 29.10.2024

J U D G M E N T

Mohammad Karim Khan Agha, J: Appellant Haroon was tried in the Additional Sessions Judge-IV (East) Karachi in Sessions Case No. 4897 of 2022 in respect of Crime No. 1178 of 2022 registered under Section 397/34 at P.S. KIA, Karachi and after a full-fledged trial vide judgment dated 29.05.2024 he was convicted under section 397 PPC and sentenced to suffer RI for 07 years. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case are that on 16/6/2022, police official SIP Subhan Ali was busy in patrolling in the vicinity of KIA, meanwhile, one person namely Abdul Ghaffar (complainant) and one PW Abdul Fateh alongwith one apprehended person Haroon s/o Noor Alam and recovered articles i.e. one weapon i.e. pistol 30 bore without number 2 live rounds, one mobile phone Techno Spark (white colour), mobile phone KYOCERA and one motorcycle C/M registered No. KOQ0791 came to him (SIP Subhan). Then, Abdul Ghaffar (complainant) disclosed to SIP Subhan Ali that he works in police MTRRF section Alfalah Base, and that today when he alongwith his friend reached near Nasir Jump turning point shaadi hall, then at about 2030 hours, then two persons came on a motorcycle, who on show of weapon, robbed the articles i.e. Techno mobile phone, purse (containing

cash of Rs.20,000/-, ATM Card, police card) from complainant namely Abdul Ghaffar, and articles i.e. mobile phone Oppo 19-F and cash of Rs.1800/to 1900/from one PW Abdul Fateh. Somehow, complainant apprehended one of the accused, while his accomplice ran away from the spot. Then, complainant party informed the incident on Madadgar Police 15, hence the aforesaid FIR was lodged.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove his case, the prosecution examined 03-PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent and had been falsely implicated in this case. However, he did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. Learned counsel for the appellant has contended that the appellant has been falsely implicated in this case by the complainant who is a police officer as he crashed his bike against his by accident; that the best evidence was not produced; that no question was put to the accused about the recovery of the pistol from him and as such for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt.

7. Learned Additional Prosecutor General Sindh fully supported the impugned judgment and has contended that the appeal should be dismissed because it was without merit.

8. I have heard learned counsel for the appellant, learned Additional Prosecutor General Sindh and perused the record with their able assistance.

9. After my reassessment of the evidence I find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

- (a) The complainant in his FIR simply states that he and his friend Abdul Fateh were driving their bike when they were intercepted by two other persons on a motor bike who on show of arms robbed them of various items however they were able to grab hold of the appellant and capture him along with his pistol and some of the robbed items whilst the appellant's co-accused made his escape good. In his evidence however he states that during the struggle with the appellant the appellant fired one shot from his pistol. I find this to be a dishonest improvement in his evidence, as such detail could not reasonably have been left out of his FIR especially as he was a policeman, which casts doubt on his evidence.
- (b) Incredibly, the independent witness Abdul Fateh who was not a policeman and was with the complainant when the incident occurred and was even robbed himself did not give evidence hence the best evidence was kept from the court by the prosecution and the inference can be drawn under Article 129 (g) Qanoon-e-Shahdat Ordinance 984 that if he gave evidence he would not have supported the prosecution case.
- (c) That the complainant's mobile phone which was allegedly robbed from him by the appellant and which should have been sealed and produced in evidence was not done because the complainant had the phone returned to him and he had sold the same and thus this piece of evidence is also doubtful.
- (d) That the recovery of the pistol from the appellant was not specifically put to the appellant at the time when he recorded his S.342 Cr.PC statement. It is well settled by now that in the absence of seeking an explanation from the appellant in respect of any material/evidence that material/evidence cannot be used to convict him. As such the recovery of the pistol is excluded from consideration.

10. Thus, for the reasons mentioned above, by extending the benefit of the doubt to the appellant he is acquitted of the charge, the impugned judgment is set aside and the appeal is allowed. The appellant shall be released unless wanted in any other custody case.