

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Amjad Ali Bohio

SPL. CR. A.T. JAIL APPEAL NO.215 OF 2022

Appellant: Muhammad Majid s/o Muhammad Saeed through Mr. Liaquat Ali Khan, Advocate.

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

Date of Hearing: 11.10.2023

Date of Announcement: 13.10.2023

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Muhammad Majid son of Muhammad Saeed was tried by the Anti-Terrorism Court No.IV, Karachi in two Special Cases No.15 of 2021 under FIR No.1179 of 2020 u/s. 397/353/324/34-PPC r/w. Section 7 ATA, 1997 and FIR No.1180 of 2020 u/s.23(I)A Sindh Arms Act, 2013 both registered at PS K.I.A., Karachi and vide judgment dated 30.05.2022 he was convicted under section 265-H(2) Cr.P.C. and sentenced as under:

- Accused Muhammad Majid s/o Muhammad Saeed found guilty of the charged offence punishable u/s. 392/34-PPC he is convicted and sentenced to suffer imprisonment for three years R.I. and fine of Rs.10,000/- (Rupees Ten Thousand), in case of default of payment of fine, he shall further suffer imprisonment for one month more;
- Accused Muhammad Majid s/o Muhammad Saeed found guilty of the charged offence punishable u/s. 353/324/34-PPC he is convicted and sentenced to suffer imprisonment for three years and fine of Rs.10,000/- (Rupees Ten Thousand), in case of default of payment of fine, he shall further suffer imprisonment for one month more;
- Accused Muhammad Majid s/o Muhammad Saeed found guilty of the charged offence punishable u/s. 23(I)A of Sindh Arms is convicted and sentenced to suffer imprisonment for three years R.I. and fine of Rs.5,000/- (Rupees Five Thousand), in case of default of payment of fine, he shall further suffer imprisonment for one month more;

All the sentences were ordered to run concurrently. However, the appellant was extended the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 25.11.2020 the complainant Shehlazad Khan alongwith his wife boarded on motorcycle No.KMY-4143 and went to ATM Punjab Bank situated adjacent to KFC, Sector KIA-16. At about 08:30 pm when they were busy in drawing cash from ATM two persons boarded on one motorcycle came there, one of them alighted from the motorcycle and put his pistol on wife of complainant, demanded valuables and threatened to kill her, the accused took one thousand rupees from pocket of complainant, meanwhile four police personnel boarded on two motorcycles reached there, on seeing police complainant and his wife shouted "Dacoit" and tried to apprehend the accused with the help of police. On seeing police party accused made straight firing on them. In retaliation and self-defence police party also started firing. In result of encounter accused sustained gunshot injury on his right arm and subsequently police party apprehended him while his accomplice made his escape good. On enquiry apprehended accused disclosed his name as Muhammad Majid son of Muhammad Saeed and disclosed the name of his accomplice as Haris son of unknown, on search, from the right hand of apprehended accused police party recovered one 30 bore pistol, loaded magazine with two live bullets. On personal search of accused one VEGOTEL keypad mobile phone and cash Rs.1050 were recovered. Complainant recognized one thousand rupees snatched from him. On demand of license of pistol accused failed to produce valid license for recovered arms and ammunition, accused alongwith recovered case property was brought at PS KIA where FIRs were lodged against above named accused person.

3. After usual investigation the charge was framed against the accused/appellant and he was sent-up to face trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 07 witnesses and exhibited various documents and other items. The statement of accused/appellant was recorded under Section 342 Cr.P.C in which he denied the allegations leveled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated in this case by the police because he refused to pay a bribe; that there are major contradictions in the evidence of the prosecution witnesses; that it is a fake case; that even if a robbery had taken place only RS1000 was stolen which was a minor amount and as such the appellant by being extended the benefit of the doubt should be acquitted of the charge or at least be given a reduced sentence.

8. On the other hand Additional Prosecutor General appearing on behalf of the State has fully supported the impugned judgment and in particular contended that the eye witnesses are independent persons and their evidence can be safely relied upon; that the appellant was arrested on the spot in injured condition with an unlicensed fire arm and cash which he robbed from the complainant; that the empties recovered at the crime scene after the encounter with the police lead to a positive FSL report; that the medical evidence is corroborative/supportive of the prosecution case and as such the appeal be dismissed. He has placed reliance on the case of **Ghulam Shabbir V State** (2020 MLD 1417).

9. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General Sindh, gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) The FIR was lodged with promptitude and as such there was no time for the complainant to cook up a false case against the accused. Even

otherwise the complainant had no enmity or ill will towards the accused and as such had no reason to implicate him in a false case who was in fact arrested on the spot.

(b) The prosecution case primary rests of the eye witness evidence which we will discuss in detail below;

(i) Eye witness PW 2 Shahzad. He is the complainant. According to his evidence on 25.11.2020 he along with his wife PW 4 Zohra Khan went to the Bank of Punjab (BOP) located in sector 16 Korangi Industrial Area and with drew cash from the ATM. In the meantime two motorcyclists came and one alighted from the motor bike and entered the ATM area and pointed a gun at him and demanded him to give over whatever he had. He only had RS1000 which he handed over. The remaining amount was hidden by his wife. A police party then arrived and he saw the accused firing on the police party who returned fire which resulted in one suspect falling down in an injured condition whilst the other suspect escaped. The injured suspect was apprehended on the spot by the police and one cell phone and his robbed RS1000 was recovered from him. He and his wife went to the PS where the accused was taken where ASI Shahfaq recovered an unlicensed pistol from the accused. He then lodged the FIR.

This eye witness was an independent witness who had no ill will or enmity with the appellant and had no reason to implicate him in a false case. He gave his evidence in a straightforward manner which was not materially improved upon from his timely made FIR and he was not particularly dented despite a lengthy cross examination. We find his evidence to be trustworthy, reliable and confidence inspiring and believe the same.

(ii) Eye witness PW 4 Zohra Khan. She is a teacher and the wife of the complainant and was with him when the complainant was robbed at the ATM. She gave her S.161 Cr.PC statement one day after the incident which was not materially improved on during her evidence at trial. Her evidence corroborated her husband's evidence (complainant) and the same considerations apply to her evidence as to her husband eye witness PW 2 Shazad whose evidence is discussed above.

(iii) Eye witness PW 1 Muhammed Faizan. He was the arresting officer. According to his evidence on 25.11.2020 he was on patrol when he reached near Sector 16 Korangi Industrial Area when he saw near the BOP two dacoits looting a lady and her husband. He tried to arrest the culprits but the culprits opened fire on the police party which made fire in retaliation. The accused was hit on his right arm by a bullet and was apprehended on the spot whilst his accomplice managed to escape. The complainant and his wife (PW 4) referred to above who had just been robbed by the accused narrated the story of the robbery to him on the spot and the accused was found with the complainant's RS1000 note along with unlicensed pistol. The accused was arrested on the spot and taken to the PS.

This eye witness was not a chance witness as he was a police officer on patrol of the area. He had no ill will or enmity with the accused and as such had no reason to implicate him in a false case and in such circumstances it is settled by now that an evidence of a police officer is as good as any other witness. His evidence of the encounter and recoveries are corroborated by the two witnesses who were robbed the complainant and his wife PW 4. He gave his evidence in a straightforward manner and was not dented during cross examination and as such we find his evidence to be trustworthy, reliable and confidence inspiring and believe the same.

- (c) The eye witness evidence is corroborated by the medical evidence of PW 3 Dr. Muhammed Imran who examined the accused and found that he had received a firearm injury to the elbow. There was no blackening around the wound which supports the prosecution case that the encounter took place from more than 3-feet way.
- (d) The unlicensed pistol which was recovered from the accused on his arrest matched the empties which were recovered at the scene which lead to a positive FSL report.
- (e) That if there are any contradictions in the prosecution evidence these are only minor in nature and not of such a materiality so as to effect the prosecution case and do not go to uproot the core of the prosecution case.
- (f) The prosecution evidence provides a corroborated unbroken chain of evidence from the complainant and his wife withdrawing cash from an ATM to them being robbed by the accused at gun point who then fired upon the police in order to escape and when the police retaliated the accused was shot and fell down and was arrested in an injured condition as proven by the medical evidence and the unlicensed pistol which was recovered from him lead to a positive FSL report when matched with the empties recovered at the crime scene.
- (g) That the robbed amount was recovered from the accused.
- (h) That the accused case is on a completely different footing from the acquitted co-accused who was not arrested on the spot and received no injuries and no robbed amount was recovered from him.
- (i) That the accused in his defence case claimed that he had been arrested from his house and that a bribe was demand from him by the police and when he refused to pay the bribe he was implicated in this false case by the police. However he did not give evidence on oath or call even a single DW to support his case of his arrest from his house by the police or any document or even complainant of such action by the police and as such we disbelieve the defence case especially in light of trust worthy, confidence inspiring prosecution eye witness evidence which is corroborated/supported by other evidence mentioned above.
- (j) It is true that the robbed amount was only RS1000 however under the law the minimum sentence for an offence under S.392 PPC is 3 years which was handed down to the accused and as such we cannot reduce the sentence to that below the minimum sentence which indicates that the trial court has already shown leniency in sentencing the appellant by

handing down to him the minimum sentence notwithstanding the need to pass deterrent sentences in cases of street crime which are a daily occurrence and hazard to the life of the people especially if they dare resist such armed robberies.

11. Thus, for the reasons mentioned above, the impugned judgment is upheld and the appeal is dismissed.

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