IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 84 of 2018

Appellant	:	Shahbaz Khan through Mr. Habib-ur-Rehman, Advocate
Respondent	:	The State through Ms. Robina Qadir, DPG

JUDGMENT

Omar Sial, J.: On 31-10-2016 at 1:00 a.m. at night, Waqas Ali was having tea with his friends Mehboob and Rafiullah at Canteen No. 2 on Sea View in Clifton. Three boys, out of which two were armed with pistols, came to them and robbed them of their valuables. After the robbers had left the scene, the victims informed a nearby police mobile of the occurrence. The police chased the robbers and succeeded in apprehending two out of the three after a brief chase. One of the arrested boys was identified as Shehbaz Khan, the appellant in these proceedings, whereas the second was identified as Sajid. Unlicensed pistols were also recovered from each of the arrested boys. An F.I.R. No.660/2016 was registered under section 23(1)(a) Sindh Arms Act, 2013 at P.S. Darakshan. It is unclear as to what was the fate of Sajid but as far as the appellant Shahbaz is concerned he was charged with offences under sections 392, 353, 186 and 34 of P.P.C. as well as under section 23(1)(a) of the Sindh Arms Act, 2013.

2. Shahbaz pleaded not guilty to the charge against him and claimed trial. At trial the prosecution examined Waqas Ali and Mehboob, both victims of the crime, as its first and second witness respectively. A.S.I. Mohammad Zahid, the complainant, and HC Mohammad Shafiq, both members of the police party in the mobile which was stopped by the victims, were examined as the third and fourth prosecution witness respectively. S.I. Mohammad Rashid, the investigating officer of the case was examined by the prosecution as its fifth witness.

3. In his section 342 Cr.P.C. statement the appellant professed his innocence but gave no reason for his claiming innocence.

4. The learned 4th Additional Sessions Judge, Karachi South on 4-12-2017 announced his judgment and convicted he appellant for an offence under section

23(1)(a) of the Sindh Arms Act, 2013 and sentenced him to seven years rigorous imprisonment as well as a Rs. 50,000 fine (or six months of additional imprisonment on default). It is this judgment of the learned trial court that is impugned in these proceedings.

5. I have heard the learned counsel for the appellant as well as the learned D.P.G. My observations are as follows.

6. Waqas Ali testified that Rs. 16,000 was snatched from him along with his mobile phone. In his examination in chief he stated that the Rs. 16,000 which he had was on account of rent that he had received. In his cross examination he changed his version and said that the money that he had was his salary which he had received from his employer that day. Upon being questioned that how he had the salary on the 31st when the same according to him was distributed on the 2nd of each month, he once again changed his story to say that he had received the money in cash from his employer for the medical treatment of his wife. Waqas Ali, unexplainably but according to his own admission recorded his section 161 Cr.P.C. statement after two days of the incident. This delay opens the doors for doubt as to the accuracy and veracity of such a statement.

7. Mehboob Ali testified that he was a salesman at a cosmetics shop but at the same time said that he was wearing a Rolex watch, which was also snatched from him along with his cell phone. I do not believe that a salesman in a cosmetics shop could afford to buy a Rolex watch.

8. Both Waqas Ali and Mehboob testified that the police mobile appeared on the scene a few minutes after the robbers had run away riding their motorcycle. Obviously after committing a robbery, a person would reasonably be expected to drive at a higher speed than normal but in the present case, according to the victims testimony, the robbers had only gone 50 steps in the few minutes it took for the police mobile to come and apprehend them. Waqas Ali also testified that the accused were arrested while trying to run away from the scene of crime on foot. Why would they do this when they had come on a motorcycle to rob people and ostensibly left on a motorcycle (as recorded in the memo of arrest and recovery) too, is a question that baffles one's mind. Contrary to their version H.C. Mohammad Shafiq testified that there was a gun fight and the accused were apprehended about two kilometers away from Canteen No. 2. Based upon his testimony the question that comes to mind is that how did the three victims reach the place of arrest and recovery so quickly so as to witness the proceedings. In

spite of the accused firing at the police, it was admitted that no injury or damage occurred.

9. Both victims testified that three boys on a motorcycle had come to rob them however HC Mohammad Shafiq testified that the police mobile was told by the victims that only two boys had come on a motorcycle to rob them.

10. Contrary to the testimony of both Waqas Ali and Mehboob, who said that each lost a cell phone whereas Rs. 16,000 and a Rolex watch was also snatched from them, the memo of arrest and recovery made by the complainant A.S.I. Zahid only records that Rs. 3,000 and one cell phone was recovered from the accused. Keeping in mind that the prosecution version is that the boys were apprehended just 50 steps away from the place of incident, it appears strange that the rest of the property was not recovered from their possession.

11. The F.I.R. shows that the investigation in the case was assigned to S.I. Mohammad Mithal. However, no explanation was offered as to why S.I. Mohammad Rasheed conducted the investigation.

12. The description of the weapons seized was not recorded in the memo of arrest and recovery. In fact HC Mohammad Shafiq admitted that the sketch of the pistol made on the spot did not depict the pistol produced at trial as a star made on the pistol sketch was not on the pistol produced at trial. He also admitted that the colors on the butt on the pistol produced at trial were not mentioned in the memo.

13. Mohammad Rasheed admitted at trial that the departure entry he had produced at trial to show that he had gone to inspect the scene of incident had clear over writing on the original text. He also admitted that the memo of arrest and recovery did not have any description of the seized weapons nor had any of the prosecution witnesses disclosed the description to him. He also expressed his inability to distinguish as to which weapon was seized from which of the accused.

14. The credibility of the witnesses was doubtful. Witnesses contradicted themselves on basic facts. It could not be conclusively established that the weapons seized were the same as the ones produced at trial.

15. In view of the above, the prosecution was unable to prove its case against the appellant beyond reasonable doubt. The benefit of such doubt should have gone to the appellant in accordance with well established principles of law. Accordingly, the appeal

is allowed and the appellant acquitted of the charge. He may be released forthwith if not required in any other custody case.

JUDGE