

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 534 of 2018

Appellant : Rajab Ali  
through Ms. Abida Parveen Channer & Mr. Shamsher  
Khan, Advocates

Respondent : The State  
through Mr. Talib Ali Memon, APG

Date of hearing : 10<sup>th</sup> November, 2022

### **JUDGMENT**

#### **Background**

1. A police mobile led by S.I. Sajid Mehmood was on patrol duty on 28.10.2013, when 2 individuals named Ammad Ashraf and Asim Gujjar came to him and informed him that 3 persons on a motorcycle had just robbed them of their valuables. The police party along with the 2 robbed victims (on their own motorcycle) chased the robbers. This led to a shoot-out between the robbers and the police. One of the robbers fell of the motorcycle whereas 2 of his companions managed to make their escape good. The fallen robber, who was later identified as Rajab Ali, was arrested on the spot and an unlicensed 0.30 bore pistol was recovered from his possession. Rs. 10,000 and a mobile phone which had been snatched from Ammad Ashraf were also recovered. The valuables which had been snatched from Asim Gujjar had been taken away by the 2 robbers who managed to escape. 2 cases were filed against Rajab Ali. These were: F.I.R. No. 339 of 2013 registered under sections 392, 353, 324 and 34 P.P.C., and, F.I.R. No. 340 of 2013 registered under section 23(1)(a) of the Sindh Arms Act at the Sukhan police station.

#### **F.I.R. No. 339 of 2013 registered under sections 392, 353, 324 and 34 P.P.C.**

2. Rajab Ali pleaded not guilty and claimed trial. PW-1 A.S.I. Sajid Mehmood was the police officer who arrested the appellant and effected recovery. PW-2 H.C. Sajid Ahmed was a witness to the arrest and recovery as well as the inspection of the place of incident. PW-3 Ammad Ashraf was one of the victims of the crime as well as the complainant. PW-4 S.I. Zakirullah was the investigating officer of the case. In his section 342 Cr.P.C. statement Rajab Ali said that he was

innocent. The learned trial judge on 05.12.2017 convicted the appellant under sections 392/353/324/34 P.P.C. to 4 years in prison as well as pay a fine of Rs. 20,000 and in he did not pay the fine he would have to spend another 3 months in prison. It would have been more appropriate if the learned trial judge would have passed the sentence for each offence separately.

3. Learned counsel has argued that even though the prosecution claims that there was a shoot-out, the investigating officer had not recovered any empties from the place of incident; the recovered pistol was sent for forensic examination after 3 days of the incident and that the same had been foisted upon him. The learned APG supported the impugned judgment. My observations and findings are as follows.

- (i) The appellant was caught red handed on the spot while trying to flee. The mobile phone and cash robbed from the complainant were recovered from his possession on the spot along with the 0.3 bore pistol when he was apprehended. No enmity or ill-will against S.I. Sajid Mehmood or the private complainant Ammad Ashraf was either argued or is reflected from the record. The police mobile involved in the encounter, with registration no. SP-3746 was sent for forensic examination, and on 17.01.2013 the forensic examiner opined that it had 2 bullet damage on its body.
- (ii) As regards the learned counsel's argument that no empties were collected from the place of incident, the record reveals that she is not correct in her assertion. The memo of inspection of the place of incident which was prepared on 28.10.2013 shows that the police had recovered 2 empties of a .30 bore pistol and 4 empties of an SMG from the place of incident.
- (iii) The empties were also exhibited at trial. I notice however that neither the empties nor the forensic report of the mobile was put to the appellant in his section 342 Cr.P.C. statement and thus cannot be used as evidence against him. Further, neither was the seized pistol put to the appellant in his section 342 Cr.P.C. statement nor was he confronted with the report of the forensic laboratory. This too cannot be used as evidence against him. In view of the foregoing, I am inclined to give the benefit of doubt to the appellant.

- (iv) Learned counsel for the appellant's argument that Asim Gujjar was not examined at trial is correct. In my opinion though, this lapse will not negatively impact the prosecution case as the other victim Ammad Ashraf was present throughout and testified at trial. It cannot be said that if Asim Gujjar would have come to testify he would have not supported the prosecution case. Asim Gujjar's absence at trial will not impact the prosecution case.
- (v) I have been informed by the learned counsel that the appellant has completed his sentence but that he is still in jail confined in some other case.
- (vi) The appeal is allowed as far as the charge under section 324 and 353 P.P.C. is concerned. The appeal is dismissed as far as the conviction and sentence under section 392 P.P.C. is concerned. In the event the appellant has completed his sentence he may be released in this case.

**JUDGE**