

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 642 of 2021
Criminal Appeal No. 643 of 2021
Criminal Jail Appeal No.38 of 2022

Appellants : Munir & Shoaib
through Mr. Imtiaz Ali Awan, Advocate.

Respondent : The State
through Mr. Zahoor Shah, D.P.G.

Date of hearing : 1st. September, 2022

JUDGMENT

Omar Sial, J.: At about 7:30 p.m. on 05.05.2021 a man by the name of Inayat Khan was on his motorcycle when he was intercepted by 3 boys on another motorcycle. On gun point, Inayat was deprived of his valuables, and as the 3 boys were attempting to flee, the public at large, witnessing the commotion chased them with the assistance of nearby policemen, and managed to catch hold of 2 of the boys whereas the 3rd managed to escape. The 2 captured boys were given a good beating by the members of the public and then handed over to the police. The money looted from Inayat was not recovered as the 3rd accused had run away with it. However, a pistol each was seized from the 2 boys who were caught. The 2 boys were identified as Shoaib and Munir – the 2 appellants in these proceedings. F.I.R. No. 333 of 2021 was registered under section 397 P.P.C. at the Sohrab Goth Police station. In addition, F.I.R. No. 334 of 2021 and F.I.R. No. 335 of 2021 were also registered under section 23(1)(a) Sindh Arms Act, 2013 against Shoaib and Munir, respectively, as the weapons they carried were not licensed.

2. As both the appellants pleaded not guilty to the charge against them, in order to prove its case, the prosecution examined 4 witnesses. The 1st prosecution witness was the complainant Inayat Khan himself (**PW-1**). The 2nd prosecution witness was A.S.I. Muhammad Azam Jakhrani who was the police officer who had arrived at the scene of the incident and with the aid of the public had apprehended, searched and arrested the 2 appellants (**PW-2**). The 3rd prosecution witness was A.S.I. Qutubuddin Pirzada who was the investigating officer of the case (**PW-3**). The 4th prosecution witness was Malang Khan Bajaur

who was an eye witness to the incident (**PW-4**). In his statement under section 342 Cr.P.C. appellant Shoaib said that he had been falsely involved in the case. He further stated that he was merely walking back home and the police arrested him for doing nothing. Appellant Munir on the other hand while denying the allegations against him as false said that Inayat Khan, the complainant, owed him money and that's why he had been implicated. Neither brought any witness to support their respective stance.

3. At the end of the trial the learned 4th Additional Sessions Judge, Malir found both appellants guilty as charged and while convicting them for an offence under section 397 P.P.C. on 04.11.2021, sentenced them to 7 years in prison as well as directed them to pay a fine of Rs. 30,000 each and in case they did not, they would have to stay in prison for another 3 months. Through another judgment announced on the same date, for offences under section 23(1)(a) Sindh Arms Act, 2013, the appellants were sentenced to 3 years rigorous imprisonment as well as directed to pay a fine of Rs. 10,000 each and if they did not pay the fine they would have to spend another 1 month in prison. The appellants have challenged all three judgments through the captioned appeals. As the evidence recorded in all cases was the same and the 3 cases also originate from the same transaction, all the appeals will be disposed of through this common judgment.

4. The learned counsel while arguing on behalf of the 2 appellants said that it was a false case against the appellants and that the real reason for the false implication was a dispute that existed between Inayat Khan and the 2 appellants. In addition he argued that both the complainant and the appellants lived in the same area and that the motorcycle on which the appellants had come to allegedly rob Inayat Khan was not recovered. He also pointed out 3 contradictions which I have highlighted in my observations below. He therefore prayed that the appeals be allowed and the appellants acquitted of the charge. The learned DPG supported the impugned judgments. None appeared on behalf of the complainant.

5. I have heard the learned counsel as well as the learned DPG and with their able assistance gone through the record and re-appraised the evidence. My observations and findings are as follows.

6. What transpires from the reading of the evidence is that Inayat Khan was on his motorcycle when 3 boys on a motorcycle attempted, and succeeded, in robbing him – a very common occurrence in Karachi of late. Inayat, resisted to an extent and managed to snatch the pistol of one of the appellants. In the ensuing commotion the public managed to also get hold of the 2 other boys but one of them still managed to escape. The learned counsel was of the view that as in the F.I.R, the complainant had stated he was going to Gulshan-e-Maymar on the day of the incident and at trial he denied that he had said that but that he was going to Sohrab Goth, the complainant could not be believed. Learned counsel also argued that while on the one hand the prosecution case is that the 2 appellants were apprehended by the public at large, the complainant in his testimony at trial has stated that there was nobody else when he apprehended one of the appellant and snatched his pistol. The learned counsel is correct in what he says, however, I am of the view that these contradictions are not material and are not sufficient to create doubt in the prosecution case. The statement made by the complainant that he had apprehended one appellant alone, cannot be looked at in isolation and when the entire evidence is seen it is determined that the initial encounter was between the complainant and the appellants alone. It was the subsequent chain of events in which the public also got involved. The last argument of the learned counsel was that the complainant acknowledged at trial that no document was prepared by the police at trial. He is correct in this stance as well. The memo of arrest shows that it was made on the spot and that the complainant himself was also one of the witnesses. This was a lapse on the part of the police. However, in the present case when the place of occurrence, the arrest and the subsequent registration of F.I.R. is not denied, this lapse on the part of the police, in my view, is not sufficient to upset the conviction. Further, I have also kept in mind that the apprehension and the arrest of the 2 appellants was impromptu and occurred on the spur of the moment. The police was not called and the police party that caught the 2 suspects happened to be in the vicinity on patrol at that moment. In such an eventuality malafide cannot be attributed to the arresting police party.

7. The prosecution case is that there were at least 60 to 70 persons who had contributed to catching the appellants and subsequently beating them on the spot. Learned counsel argued that in spite of this no private person came forward

as a witness and that the only eye witness to the occurrence is Malang Khan who also happened to be the complainant's cousin. Learned counsel is correct. However, one cannot deny that common persons, as well as victims of mugging themselves, in most cases are extremely reluctant to put their name down as witnesses as they are well aware that being involved in a trial will necessarily cause them great inconvenience for some years. Creating bad blood with criminals also prevents people from volunteering to witness. The mere fact that Malang Khan was a relative of the complainant cannot be a ground to discard his testimony as he had no malafide towards the appellants, he owned a pan cabin close to where the incident occurred and his testimony supported and corroborated the version of the other witnesses.

8. The record also reveals that the line of defence which the appellants had taken while evidence was being recorded was that Inayat and Malang had an altercation with Munir, a rickshaw driver, over payment of fare and Shoaib had come to the spot merely to resolve the dispute. However, instead of the dispute being resolved, both Munir and Shoaib were accused of robbing Inayat. In absence of any supporting witness coupled with Munir giving a vague defence of dues not paid and Shoaib saying that he was merely walking when arrested, the defence raised by the appellants does not sound convincing or believable. Speaking hypothetically, even if there was a dispute over rickshaw fare, why would every other witness also lie about what had transpired, was not explained.

9. A black colored, without a number, 0.3 bore pistol along with a loaded magazine containing 3 live bullets was recovered from Shoaib for which he could not produce a license. Similarly, a 0.3 bore pistol along with a loaded magazine containing 2 live bullets was recovered from Munir for which he could also not produce a license. The pistols were recovered when the 2 appellants were caught on the spot soon after having deprived the complainant of his valuables. The words "*14 Shot Pistol Made in China Cal 30 Bore*" were inscribed on Munir's pistol. The weapons were seized on 05.05.2021 and were sent to the Fire Arms Unit of the Sindh Forensic Division for examination on 08.05.2021. The report however does not reflect the inscription on the weapon recovered from Munir. It is therefore not clear as to whether the weapon recovered from Munir was the same weapon that had been seized from him. The record does not indicate that the weapon produced at trial, however, was not the same one which had been

recovered. In the presence of witness testimony that both appellants had pistols which were recovered on the spot from them and that admittedly no fires were shot but the weapons were used to scare the victims of grievous hurt or death, the fact that a discrepancy occurred between the memo of recovery and the forensic report does not offer much help to the appellants. The appellants were armed with pistols and at least one of them, Shoaib, had brandished it at Inayat Khan to rob him. The entire ocular evidence cannot be reduced to nil on this account alone in the circumstances of the present case. The learned trial judge has already shown sufficient leniency in the sentencing on account of possessing unlicensed weapons. I am not inclined to interfere with the judgment of the learned trial court.

10. The incident occurred at 7:30 p.m. The appellants were apprehended by the public while attempting to flee after having deprived Inayat Khan of his valuables. A pistol was recovered from each of the appellants for which they could not produce a license. The F.I.R. was registered at 9:00 p.m. Witness statements were recorded the next day. Malafide on the part of the police and the complainant in registering a false case was not proved. The prosecution witnesses corroborated each other on all material points. In view of the foregoing, I am of the view that the prosecution was successful in proving its case beyond reasonable doubt and therefore there is no reason to interfere with the judgment of the learned trial court.

11. In view of the above, the appeals stand dismissed.

JUDGE