

IN THE HIGH COURT OF SINDH KARACHI

CIMINAL APPEAL NO.74 OF 2023

Appellants : **1. Muhammad Rahim**
, **2. Muhammad Yameen**
through Mr. Sabir Shah Advocate

Respondent : **The State**
through Mr. Zahoor Shah,
Additional Prosecutor General for
the State

Date of hearing : 4th December 2023

Date of Judgment : 4th December 2023

JUDGMENT

OMAR SIAL, J.: Mohammad Naveed Idrees runs an estate agency office. On 12.06.2019, he was at the office along with his friend, Abdul Talib, when they heard someone cocking a pistol outside the office. Naveed went outside and saw two persons robbing a third person. One of the robbers pointed his pistol at Naveed and told them to return to the office. Naveed went back in and pulled out his pistol. One of the robbers told him to put his pistol back and not to shoot, but Naveed did not comply. Fires were shot, and one bullet hit Naveed in his leg. F.I.R. No. 169 of 2019 was registered under sections 324 and 34 P.P.C. at the Nazimabad police station on 12.06.2019.

2. Two persons, identified as Mohammad Rahim and Mohammad Yaseen, were already in custody for possessing unlicensed weapons, and it was during interrogation in that case that they also confessed to having shot at Naveed. Naveed was called to the police station, where he identified the two persons as the same ones who were the robbers, out of whom one was the shooter.

3. Both Mohammad Rahim and Mohammad Yaseen pleaded not guilty and claimed trial. At trial, the prosecution examined **PW-1 Mohammad Naveed Idrees** was the complainant. **PW-2 Abdul Talib** was an eye-witness. **PW-3 A.S.I. Abdul Karim** was the scribe of the F.I.R. **PW-4 Shamimullah Sheikh**, who was being robbed when Naveed intervened. **PW-5 S.I. Mohammad Sarfaraz Hussain** was the investigating officer of the case. PW-2 Abdul Talib was re-called and examined further towards the end of the trial. One other witness, **PW-6 Dr. Mohammad Khalid**, who had given medical treatment to Naveed, was also called under section 540 Cr.P.C.

4. In their respective section 342 Cr.P.C. statements, the appellants professed innocence and stated that they quarrelled with the police outside the court, and as a consequence, this case was foisted upon them. However, the learned 2nd Additional Sessions Judge, Karachi Central, on 12.01.2023, convicted both appellants for an offence under section 324 P.P.C. and sentenced them to a three-year prison term and a fine of Rs. 25,000.

5. I have heard the learned counsel for the appellant and the learned Additional Prosecutor General. Naveed, the complainant, did not respond to any of the several court notices sent to him and thus did not effect an appearance. My observations and findings are as follows.

6. The learned trial court has made an error in framing the charge. The present case against the appellants was solely under section 324 P.P.C.; however, the charge was framed under sections 393, 394, 398 and 34 P.P.C. The conviction was awarded under section 324, though. I have reviewed the case, and it seems that the appellants were not prejudiced due to the defective charge. With the consent of both the learned counsel for the appellants and the learned Additional Prosecutor General, I have heard the case on the basis that the charge had been appropriately framed.

7. I find it very difficult to believe, to start with, that persons who are arrested for possessing unlicensed weapons will also confess to other crimes, for which they could expose themselves to a potentially higher quantum of sentence. Inevitably, the prosecution story is that persons were arrested for possessing weapons, and then when they are interrogated, they confess to all sorts of crimes. Such a procedure may hold weight if the police follow it up with identification parades for the victims of those other crimes to come forward and identify whether the arrested culprits were the criminals in their respective cases. This is not done in most cases; the present case is no different. While the appellants were ostensibly detained in another case, Naveed was called to the police station, where he told the police that these were the same persons who had shot at him. On the one hand, Naveed's memory was sharp enough to recognise the robbers; on the other hand, he could not identify which of the two robbers was the one who had shot at him. Identification becomes more suspicious and doubtful when one notices that only a vague description of the robbers was given in the F.I.R. A person with a memory as good as Naveed's should have been able to describe to the police what the robbers looked like. A layperson might not know of such a requirement, but the police is certainly expected to know. When no meaningful description, is given in the F.I.R. or a subsequent statement, it is equivalent to giving the police the license to implicate anybody they want in a crime.

8. It is also interesting to notice that Naveed changed the statement he recorded in his section 154 Cr.P.C. statement when he testified at trial. In his section 154 Cr.P.C. statement, he said that the two persons had come to rob him, whereas, in his testimony, he said that the robbers were robbing somebody else outside. Naveed seems to have tinkered with his statement to reconcile it with what PW-4 Shamimullah said at trial. Shamimullah, a dubious witness, stated at trial that the robbers had wanted to steal Rs. 42,000 from him when Naveed had intervened. The investigation officer did not think it

essential to verify Shamim's claim by obtaining his employment and bank records to see whether he withdrew Rs. 42,000 from his bank a little while before the robbery bid. The Rs. 42,000 was not recovered. Shamim, at trial, also did not give his national identity card number or complete address, making him appear more suspicious, nor explain how he knew Naveed when, before the incident, he had no clue of his existence.

9. Naveed's role as a good Samaritan also requires consideration. He brought danger upon himself by intervening with a weapon during an alleged robbery and then admittedly refusing to lower the pistol that he had pulled out at the robbers. The prosecution case appears to be intentionally silent on whether the robbers had (if at all) fired, then was it because of Naveed shooting at them? The investigators did not explore this avenue, nor did they investigate whether the pistol that Naveed pulled out was duly licensed to him. Eight bullets were fired on the spot, according to witness Abdul Talib, yet not a single casing was recovered from the scene.

10. Given the above, I am not satisfied that the prosecution proved its case beyond reasonable doubt. The appellants are acquitted of the charge. They are present on bail their bail bonds stand discharged.

JUDGE