

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
Criminal Appeal No.306 of 2024
(Ubaidullah vs. The State)
Criminal Appeal No.307 of 2024
(Ubaidullah vs. The State)

15.11.2024.

Mr. Abdul Hakeem, advocate for appellant
Ms. Seema Zaidi, Addl: PG Sindh

J U D G M E N T

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Muhammad Iqbal Kalhoro, J:- Appellant, charged to have committed an offence of robbery from complainant, namely, Irshad Khan, on 02.07.2023 at about 1400 hours when he was available in Street No.5, Sector-35-C, Korangi No.1-1/2 Karachi at Plot No.344, was tried by the Court of VI-Additional Sessions Judge, Karachi East, in Sessions Case No.3007/2023 and has been returned guilty verdict vide impugned judgment dated 22.04.2024.

2. As per brief facts, complainant was present in a street on the above given address on 02.07.2023 and was talking on phone, when two persons on a motorcycle went past him, and then returned and on show of weapons snatched his mobile phone. After that, when they were fleeing, he grabbed one person sitting on back seat, hence, he fell down, whereas, his accomplice sped away the motorcycle. He meanwhile raised hue and cry, which attracted passersby, who came immediately at the spot and started beating the said person. Meanwhile, a police mobile also came with a team headed by an ASI, who got the person released from the mob. He inquired his name but due to his injuries caused to him by public, he could not speak. His search was conducted, one revolver with four (4) live bullets and two mobile phones including robbed mobile of complainant were recovered from him. The said ASI then completed the paper work at the spot, obtained signature of the complainant and brought the accused at Police Station along with complainant, where complainant registered the FIR against him.

3. After usual investigation, the charge sheet u/s 173 CrPC was submitted in the Court, followed by a formal charge to which appellant pleaded not guilty and claimed trial. In the trial, prosecution has examined three (03) witnesses, ASIP Waseem Akhtar, ASIP Mehmood Alam and complainant, Irshad Khan, who have produced all the necessary documents, FIR memo, positive FSL report of the revolver recovered from the appellant, etc. After evidence of prosecution, statement of appellant was recorded u/s 342 CrPC. He has simply denied the case. By means of impugned judgment, appellant has been convicted and sentenced to undergo rigorous

imprisonment for 07 years and fine of Rs.50,000/-, in default to suffer another 02 months S.I. for committing an offence u/s 397 PPC, hence, this appeal.

4. Learned counsel for the appellant has argued that appellant is innocent and has been falsely implicated in this case. The complainant has not identified the appellant in his evidence, hence, the case against him is doubtful and he may be acquitted.

5. On the other hand, learned Additional Prosecutor General Sindh has supported the impugned judgment.

6. I have heard the parties and perused material available on record including the evidence led by prosecution. Complainant has been examined as PW-3, Exh-16. He has materially supported the story of FIR and has not contradicted himself on any of substantial point. He has been subjected to cross examination but nothing worthwhile injuring prosecution case has come on record. He has confirmed in his evidence that appellant was apprehended at the spot after he committed robbery of a mobile phone from him. Initially, he was beaten by the enraged mob gathered on his hue and cry but then an ASI patrolling on a police mobile arrived there, who rescued him from the mob. ASIP Waseem Akhtar, the Investigating Officer (**IO**) of the case, PW-1, Exh-3 has deposed that when the appellant was handed over to him, he was in injured condition and unable to speak because of injuries caused to him by the public gathered at the spot. During investigation and verification, he was identified to be Ubaidullah. According to him, he had visited place of incident and prepared such memo, which he has produced in his evidence. According to him, he recorded statement of complainant u/s 161 Cr.PC, in which, he has supported the case. Per him, due to his injured condition, the accused was admitted in Jinnah Post Medical Centre (**JPMC**) for few days. He had sent the revolver recovered from him for FSL report. The said report in positive and all the relevant documents, he has produced in evidence.

7. The other witness examined by the prosecution is ASIP Mehmood Alam. According to his evidence, he was on patrolling duty on the day of incident viz. 02.07.2023 and reached the place of incident, where public with a person was present along with complainant, who introduced himself as Irshad. The complainant disclosed that the said person had robbed a mobile phone from him and when he was fleeing, he caught hold of him, whereas his accomplice fled away, meanwhile, public arrived and beat him. Hence, he took search of the apprehended person and recovered one pistol and two mobile phones including the robbed mobile phone of complainant. He then formally

arrested the accused, prepared such memo, which he has produced in the evidence. Further, as per his evidence, he had sealed the recovered property at the spot and brought the accused and complainant at Police Station, where FIR was lodged accordingly.

8. After perusing the evidence of all three (03) witnesses I have not found any mitigating circumstances in favour of appellant to give its benefit to him. All three (03) witnesses have supported each other on salient features of the case. Their evidence is complimentary to each other, from arrest of the appellant at the spot to the submission of the challan in the Court, they have espoused each other. The prosecution evidence is complete and without any discrepancy. The defence taken by learned counsel for the appellant that appellant was not identified by the complainant is ill-founded. The appellant at the time of arrest was without beard but meanwhile he had grown beard as well as hair, which fact the complainant has narrated in his evidence. Otherwise, he has identified the appellant to be the culprit of the present offence. In his evidence, the complainant has clearly stated that accused has changed his appearance by growing beard and hair. This fact was verified from the photograph of the appellant taken at the time of his arrest, which was without beard and long hair.

9. Besides complainant, the ASIP Mehmood Alam, who had arrested the appellant at the spot has also identified him to be the same person. Therefore, there is no mistake in identifying the appellant to be the culprit of the crime. Even otherwise, it was only the appellant, who was arrested from the spot and his accomplice who was with him had fled away. Hence there is no chance that the real culprit arrested from the spot has been substituted for the appellant at the time of arrest.

10. A revolver was also recovered from the appellant of which he failed to produce any license. The said weapon was sent for FSL examination, the report of which has been produced as Exhibit-7 and is in positive. Learned defence counsel has not forwarded any argument to show that recovery of unlicensed revolver from the appellant is doubtful or that the said weapon has been foisted upon him. The evidence of same three witnesses has been recorded in the case of recovery of weapon, and they have not contradicted each other on recovery of unlicensed revolver from the appellant. I therefore see no circumstances in both the cases to give its benefit to the appellant and acquit him. The prosecution has proved both the charges *i.e.* robbery and recovery of an unlicensed weapon from the appellant without any doubt. The impugned judgments are based on sound reasoning and findings are duly supported by the valid and solid reasons. Nothing has been suggested

in defence to give its benefits to the appellant in the case. Hence, both the appeals in hand are dismissed. These are the reasons of short order dated 14.11.2024, whereby, these appeals were dismissed.

The appeals stand dismissed in above terms.

J U D G E

Rafiq/P.A.