

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Jail Appeal Nos. S-789 & 790 of 2024

BEFORE:

Mr. Justice Khalid Hussain Shahani

Appellant : Umair son of Nouman
Through Mr. Sagheer Ali Solangi, Advocate

Respondent : The State
Through Mr. Sardar Ali, DPG

Date of hearing : 26.02.2025
Date of Judgment : 21.04.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – Appellant Umair was convicted by learned Additional Sessions Judge-II Karachi East, in Sessions Case No.3582/2023 & 3583 of 2023, stemming out of FIR Nos. 344/2023, offence under section 392/397/34 PPC & FIR No.345/2023, offence under section 23-1(a) Sindh Arms Act of P.S Shah Faisal Colony, and sentenced as under; -

For offence under section 397 PPC to suffer R. I. for 4 years along with fine of 10,000/- with benefit of section 382-B Cr.P.C.

For offence under section 23-1(a) Sindh Arms Act to suffer R.I for 04 years with fine of Rs.5000/-.

2. As per prosecution theory on 01.08.2023 at 1300 hours, behind Superior Science College Block-02 Shah Faisal Colony, Karachi appellant along with co-accused Aftab being armed with deadly weapons came on motorcycle and on gun point committed robbery by snatching the purse from complainant Mst. Samreen Imran, containing mobile phone, Cash of Rs.1600/- and color copy of CNIC of her son. The appellant along with co-accused Aftab were arrested at spot by Inspector in presence of complainant, consequent upon inter-alia facts instant FIR u/s 392/397/34 PPC was registered along with separate FIR u/s 23-1(a) Sindh Arms Act.

3. During course of investigation, co-accused Aftab was found minor about 15/16 years age as such his case was sent to Judicial Magistrate III Karachi East being juvenile offender.

4. Formal charges were framed, to which appellants pleaded not guilty. To substantiate its case, prosecution examined Mst. Samreen Imran (complainant), PC Altaf Ali (mashir of arrest & seizer), P.W-03 PI Allah Dino (investigation officer). The appellant in his statements under section 342 Cr.P.C. denied all wrong doing.

5. At the very outset, learned counsel for the appellants contended that the alleged incident occurred on 01.08.2023 at 1300 hours; however, FIR and memo of arrest and seizer showing the same time as 1300 hours; he next contended that as per the prosecution theory, complainant was with his son Salman Khan, but not made witness contrary her husband Imran was made witness in the report under Section 173 Cr.P.C.; he next contended that no robbed article was recovered from the appellant and it has been shown allegedly recovered from accused Aftab Ali; he next contended that no description of pistol is mentioned, and according to FSL report, same was not in working order; he next contended that no private witness was associated from the place of incident; he further submitted that accused is in jail since 01.08.2023 and suffering such hardship; he lastly prayed that appellant may be acquitted by setting aside the convictions which is based on surmises as the learned trial judge did not consider the material contradictions brought on the record.

5. On the other hand, learned APG for the State vehemently opposed both the instant appeals and further submitted that prosecution has successfully proved its case against the appellants beyond reasonable doubt. It was submitted that appellant was nominated in the FIR and was apprehended shortly after the incident by the police during hot pursuit and weapon was also recovered from his possession. It was contended that the statements of the complainant and other prosecution witnesses were consistent on material aspects and supported the prosecution version regarding the occurrence of robbery and apprehension of appellant. Learned APG acknowledged that there may be minor contradictions in the prosecution evidence, but submitted that these are natural and do not affect the core of the prosecution's case. It was argued that improvements, if any, are not sufficient to discard otherwise reliable ocular evidence. The learned APG also submitted that even if the accused was not represented by counsel at every stage of the trial, there is no specific prejudice shown to have been caused to the accused, particularly when the trial was otherwise conducted

in accordance with law and concluded within a reasonable time. The learned APG therefore, prayed for dismissal of the appeal and maintained that the impugned judgments are well-reasoned and requires no interference by this Court.

6. Record reveals, allegedly an incident of street crime transpired at 1300 hours behind the Superior Science College, wherein the complainant stated in her FIR that the individual seated on the rear seat of a motorcycle, armed with a pistol, forcibly took away her shoulder bag containing personal valuables. It is further reflected that the police arrived at the scene and apprehended two individuals, including the present appellant. The appellant was identified as the person seated on the rear of the motorcycle, and the act of snatching the complainant's belongings was specifically attributed to him. However, it is noteworthy that no valuable articles were recovered from the personal search of the appellant; rather, the recovery was affected from the co-accused, Aftab Ali.

7. Complainant in her cross-examination, admitted that the memo of arrest and seizer was prepared at the police station and that her signatures were also obtained over there. Curiously, the arrest and recovery memo produced by the prosecution bears the time of 1300 hours as the time of its preparation. This assertion does not appeal to reason, as it is inconceivable that if the incident itself occurred at 1300 hours, the complainant could have proceeded to the police station, the accused apprehended, and the memo prepared, all within the same precise moment. Such incongruity not only raises serious doubts but also strikes at the root of the credibility of the prosecution's version. The learned trial Court failed to appreciate this glaring inconsistency and material contradiction with respect to whether the memo was prepared at the scene of the offence or at the police station. This discrepancy is not a minor or technical lapse, but rather one that materially undermines the veracity of the arrest and recovery proceedings alleged against the appellant.

8. The inconsistencies in the prosecution case do not end there. In her examination-in-chief, the complainant stated that she was accompanied by her son Salman, for the purpose of his admission at the Superior Science College. However, said son was neither cited as a witness to the arrest and recovery, nor was his statement recorded under Section 161 Cr.P.C. More significantly, he was not summoned by the trial Court as a Court witness, which could have lent independent corroboration to the arrest and seizer proceedings. On the contrary, the only supporting witness cited in this regard is P.C. Altaf, a police official. It is further troubling that although the alleged incident took place in a public and populated area, not a single independent person from the vicinity was associated

with the proceedings of arrest and seizure. The cumulative effect of these omissions and lapses gives rise to serious doubt regarding the authenticity and legality of the alleged recovery and the manner of arrest, thereby weakening the prosecution's case considerably.

9. It is further observed that when the complainant, Mst. Samreen, appeared before the Court as P.W-01, the case property viz. the articles allegedly snatched from her during the incident was not produced for identification or confrontation. This omission constitutes a serious procedural lapse. In criminal trials, especially those involving offences such as robbery or snatching, production and identification of case property before the trial Court are essential components of the prosecution's burden to establish its case beyond reasonable doubt. Failure to produce the incriminating property deprives the Court of an opportunity to assess whether the recovered articles actually pertained to the offence alleged, thereby casting a shadow over the chain of custody and the legitimacy of the recovery proceedings.

10. Additionally, it appears from the record that the present appellant was not provided legal representation at State expense, despite being a pauper accused. The failure to ensure provision of counsel is not only a violation of the accused's right to fair trial guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, but also contravenes the mandatory requirements under the Sindh High Court Rules and Orders. Part E, Chapter 24 of the said Rules stipulates that in every criminal trial where an accused is unrepresented and unable to afford private counsel, it is the bounden duty of the Court to appoint an advocate at State expense. The right to counsel is not a mere formality, but a substantive safeguard ensuring that the accused can effectively defend himself against the charges leveled. Non-compliance with this fundamental guarantee renders the trial vulnerable to challenge for being unfair and violative of due process.

11. Yet another legal infirmity arises from the fact that two separate judgments were rendered in respect of accused persons arising from one and the same FIR and stemming out of a single criminal transaction. Such bifurcation of verdicts in a joint trial militates against the settled principles of law laid down under Section 239 Cr.P.C. The said provision contemplates that where more persons than one are accused of the same offence committed in the course of the same transaction, they shall be tried together and the case shall culminate in a single judgment. Rendering of separate judgments in a joint trial not only leads to conflicting findings but also offends the principle of judicial consistency.

12. This irregularity stands condemned in the authoritative judgment of *Nasrullah v. The State* (PLD 2016 Sindh 238), wherein this Court held, the pronouncement of separate judgments in respect of co-accused in a single case is impermissible under the law and amounts to miscarriage of justice. In the present case, the deviation from this settled principle adds yet another layer of irregularity and prejudice to the trial proceedings, thereby weakening the legal sustainability of the conviction recorded against the present appellant.

13. The record further reveals that the accused was not provided the effective opportunity to cross-examine the prosecution witnesses through a counsel of his choice. The right to cross-examine is not merely a procedural formality, it is an essential safeguard of justice, the importance of which is accentuated when the accused is facing a possible sentence of seven years' rigorous imprisonment. Cross-examination is the very heart of a fair trial, for it is through this mechanism that the defense tests the credibility, veracity, and reliability of the prosecution's evidence. Without this crucial check, the testimony of a witness goes unchallenged and untested, and the trial ceases to be adversarial in its truest sense. The constitutional guarantee under Article 10-A of the Constitution of the Islamic Republic of Pakistan ensures not just a trial, but a fair trial, encompassing the right to adequate legal representation. When a person is tried for an offence carrying serious penal consequences, the availability of a trained legal practitioner during cross-examination becomes indispensable. A layman in custody, untrained in legal advocacy, cannot reasonably be expected to challenge contradictions, highlight inconsistencies, or discredit hostile testimony. The denial of cross-examination through counsel therefore effectively paralyzes the defense and renders the process one-sided. In the present case, it is evident from the record that the accused, being in custody and unrepresented, was unable to effectively challenge the prosecution's version at critical junctures of the trial. This is in line with the cardinal principle of "*Audi alteram partem*", and the broader guarantee of a fair trial under Article 10A of the Constitution of the Islamic Republic of Pakistan. The right to be informed of the evidence being led against a person, and to be granted an effective chance to challenge it, is not a luxury but a fundamental constitutional safeguard.

14. These cumulative irregularities, unexplained improvements by the complainant, denial of cross-examination through counsel, and the irregular, coupled with other defects like signatures of mashir on each & papers on the right side bottom of the page with differences create serious doubts as to the legality and fairness of the entire trial. It is a settled principle that where doubt arises in the mind of the court regarding the

credibility of evidence and the integrity of the procedure, the benefit must always go to the accused, however grave the charge may be. The prosecution must stand on its own legs and prove its case beyond reasonable doubt, which it has demonstrably failed to do in the present case.

15. The overall discussion concluded that the prosecution has miserably failed to establish the guilt against the appellant beyond the shadow of any reasonable doubt and it is a well-settled principle of law that for creating the shadow of a doubt, there should not be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is always extended in favour of the accused not as a matter of grace or concession, but right. In this respect, reliance is placed on the case of ***Muhammad Mansha v. The State (2018 SCMR-772)***. The rule of benefit of the doubt is essentially a rule of prudence which cannot be ignored while dispensing justice following the law. The conviction must be based on unimpeachable evidence and certainty of guilt and doubt arising in the prosecution case must be resolved in favour of the accused. The said rule is based on the maxim. ***"It is better that ten guilty persons be acquitted rather than one innocent be convicted"*** which occupied a pivotal place in Islamic Law and is enforced strictly because of the saying of the Holy Prophet (Peace Be Upon Him) that the ***"mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent"***. The prosecution is bound to prove its case against the accused beyond any shadow of reasonable doubt, but no such duty is cast upon the accused to prove his innocence. It has also been held by the Superior Courts that the conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In the case of ***Wazir Mohammad v. The State (1992 SCMR 1134)***, it was held by Supreme Court that ***"In the criminal trial it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is casted upon the accused, he has only to create doubt in the case of prosecution"***. The Supreme Court in another case of ***Shamoon alias Shamma v. The State (1995 SCMR 1377)***, held that, ***"The prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused in his defence. Failure of prosecution to prove the case against the accused entitles him/them to an acquittal. The prosecution cannot fall back on the plea of an accused to prove its case. Before the case is established against***

the accused by the prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise.” Reliance is also placed on the case of *Naveed Asghar and 2 others v. The State (PLD 2021 SC 600)*.

16. The sequel of the above discussion is that the learned trial Court has not evaluated the evidence in its true perspectives and thus arrived at an erroneous conclusion by holding the present appellant guilty of the offence; consequently, the instant criminal jail appeals are allowed and the conviction/sentence awarded to the appellant by way of impugned judgments could not be sustained, hence both the judgments are set aside and the appellant is acquitted of the charged offences. The appellant is in custody and he is ordered to be released forthwith if not required in any other custody case. No alteration is made to the order pertaining to the case property in case u/s 23-1(a) Sindh Arms Act shall continue to hold the field.

J U D G E