

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-395 of 2010.

DATE ORDER WITH SIGNATURE OF JUDGE

Appellant: In person.

The State Through Mr. Shahzad Saleem Nahiyoan,
D.P.G.

Date of hearing: 10.10.2017.

Date of decision: 10.10.2017

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J U D G M E N T:-

ABDUL MAALIK GADDI, J- Through instant appeal, the appellant has challenged the judgment dated 20.10.2010, passed by learned Additional Sessions Judge, Shahdadpur, in Sessions Case No.176 of 2010, Re: State vs. Khadim, U/s 13-E Arms Ordinance, in Crime No.121 of 2010, P.S Shahdadpur, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant u/s 13-E Arms Ordinance to undergo R.I for three years and to pay fine of Rs.5000/- and in case of default of non-payment of fine amount, he is further to undergo S.I for one month more. The benefit of section 382-B Cr.P.C was also extended to the appellant.

2. Brief facts of the prosecution case are that complainant ASI Safdar Ali Jat has lodged FIR on 15.05.2010 at Police

Station, Shahdadpur, alleging therein that he interrogated the above named accused in crime No.87 of 2010 U/S 457, 380 who was already confined at police station Shahdadpur. During interrogation accused disclosed that he has Kalashnikov without license which he is ready to produce, thereafter, they took him in safe custody alongwith HC Haji Khan, C-Manthar Ali, C-Huzoor Bux, C-Ghulam Fareed in government Mobile with Driver Mashooque Ali vide No.29 went to the place of recovery at 2145 hours, where they reached at 2210 hours reached at village Talib Hussain at the house of Khadim where accused himself before police party produced the Kalashnikov and bullet magazine the same was check out and it was in running condition and police also secured 15 bullets lying in magazine, whom they unloaded and enquired about license, accused said that it is unlicensed and he purchased it from one Brohi community man, thereafter, they sealed recovered property and prepared mashirnama in presence of mashirs HC Haji Khan, C-Ghulam Fareed, thereafter they returned back to police station alongwith accused and property where FIR was lodged.

3. A formal charge was framed against accused at Exh.02, to which he pleaded not guilty vide his plea at Exh.03 and claimed for trial.

4. At trial, prosecution examined PW-1 Liaquat Ali at Exh.04, he produced FIR at Exh.4/A, PW-02 HC Haji Khan at

Exh.05, he produced mashirnama of arrest and recovery of accused at Exh.5/A, statement filed by learned ADPP for give up PW C- Hazoor Bux at Exh.6, PW-3 ASI Safdar Ali Jat at exh.7, he produced entry No.29 at Exh.7, thereafter learned ADPP closed the prosecution side vide statement at Exh.08.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.09. He examined himself on oath at Exh.10 and also examined witness in his defence at Exh.11 and denied the allegations of prosecution and claimed himself innocent.

6. After hearing the parties' counsel, learned trial court came to the conclusion that the case has been proved against the appellant/accused; he convicted and sentenced him as stated above.

7. It is stated by appellant that he is innocent and has been falsely implicated by the police with malafide intention and ulterior motives. He further submitted that there are material contradictions and glaring discrepancies in the depositions of the prosecution witnesses. He also submitted that in the main case viz. crime No.87/2010 U/S 457, 380 of P.S Shahdadpur the appellant has been acquitted and this case is off-shoot of the same crime and this case is false, managed and concocted one and is result of strengthen the main case. He further submitted that the alleged recovered property has been foisted upon the accused by the police and that all the PWs are police officials, interested, set up, inimical and hostile towards the

accused. He further submitted that the case of the prosecution is full of doubts and it is settled law that if any single doubt arises and such benefit must be extended in favour of the accused and prayed for his acquittal.

8. On the other hand learned D.P.G for the state contended that the prosecution examined three witnesses who have fully supported the prosecution case. He submitted that the police witnesses are good as private person and their evidence cannot be discarded on the point that they are police officials. There is no contradiction in the evidence of examined witnesses and the witnesses have fully supported the versions of prosecution and the learned trial judge has rightly convicted the appellant; he therefore supported the impugned judgment.

09. I have heard the learned counsel for the parties at length and have perused the documents and evidence on record. Perusal of contents of FIR shows that during the course of interrogation in crime No.87 of 2010 at P.S Shahdadpur accused Khadim admit his guilt and voluntarily ready to produce the weapon and thereafter led to police party to his house situated in village Talib Hussain Chandio, Taluka Shahdadpur and produced unlicensed Kalashnikov and 15 live bullets in presence of mashirs (police officials), however in the said main case / crime No.87 of 2010 the appellant has been acquitted from the trial court. Further, per FIR, the appellant led police party from police station to his house

situated in village Talib Hussain Chandio, Taluka Shahdadpur and produced unlicensed Kalashnikov, but surprisingly despite of the fact that the place of recovery was situated at village Talib Hussain Chandio, Taluka Shahdadpur which is thickly populated area but complainant failed to take with him any independent person to act as mashir either from the police station or from the place of incident, such lapse on the part of prosecution had cut at the roots of its case rendering the entire episode doubtful and it, by itself, was enough to make the prosecution version unbelievable. Record further shows that the prosecution has miserably failed to produce any criminal history / record against the appellant to show that he is habitual offender.

10. I have gone through the evidence of SIP Naeem Ashraf who conducted investigation and PWs Liaquat Ali, HC Haji Khan and ASI SAfdar Ali Jat, but their evidence has been found contradictory on material particulars. Besides this as I have observed above that the place of recovery is highly doubtful, therefore, the evidence of these witnesses cannot be safely relied upon.

11. I have gone through the case of **Tariq Perves v. The State** reported as **1995 SCMR 1345**, wherein it has been held that if a single circumstance creates reasonable doubt in the prudent mind about the guilt of the accused then he will be entitled to such benefit not as a matter of grace, but as a

matter of right. Similar view has also been taken in the case of **Muhammad Akram v. The State** reported as **2009 SCMR 230.**

12. I have also perused the evidence and documents on record and has also considered the version of both the parties put forward by them through evidence and found that the version of the appellant seems more plausible and convincing, while the version of the prosecution is totally doubtful.

13. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant and learned trial court did not appreciate the evidence and documents on record properly. Consequently, the instant appeal is allowed. The impugned judgment passed by the trial Court is set-aside. Resultantly, the appellant is acquitted from the charge. He is present on bail, his bail bonds stand cancelled and surety is discharged.

JUDGE