

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No. S- 107 of 2015

Date of hearing: 24.01.2020  
Date of Judgment: 24.01.2020.  
Appellant: Through Mr. Hussain Bux Solangi, Advocate.  
Present on bail.  
  
State: Through Ms. Rameshan Oad, Assistant  
Prosecutor General, Sindh.

## **JUDGEMENT**

**ABDUL MAALIK GADDI, J-** Through this appeal, the appellant has assailed the legality and propriety of the judgment dated 30.07.2015 passed by learned Additional Sessions Judge, Umerkot in Sessions Case No.09/2015 (Re: The State V/s Arzi) arisen out of Crime No.149/2014 registered U/S 23(i) Sindh Arms Act, 2013 at PS Kunri, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in Point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.2 of the impugned judgment which reads as under:-

**“In the light of above discussion, I am of the humble opinion that prosecution has been able to establish its case against the accused beyond reasonable doubt, that accused Arzi Noohani by possessing un-licensed pistol and three live cartridges has committed an offence punishable U/S 23(i) of Sindh Arms Act, 2013, therefore, he is convicted U/S 265-H(ii) Cr.P.C and sentenced to suffer R.I for five years and fine of Rs.50,000/- (Rupees Fifty Thousand) in case of default in payment of fine he has to suffer six months more S.I. Benefit of section 382-B Cr.P.C is extended to the accused. Accused is produced in custody, he is remanded to Central Prison Hyderabad to serve out sentence awarded to him”.**

2. Facts of the case as stated in the F.I.R are that on 28.12.2014 at 1230 hours complainant ASI Sher Muhammad Khaskheli left PS for patrolling and when reached at Devi Jungle situated near house of accused in Sohrab Colony apprehended him, who during personal search recovered one 12 bore pistol and three live cartridges, such

mashirnama of arrest and recovery was prepared in presence of mashirs PC Muzaffar Hussain and Allah Bux. Thereafter accused and recovered property were brought at police station, where complainant lodged F.I.R against the accused on behalf of the State.

3. After usual investigation, the police submitted final report before the concerned Judicial Magistrate, who took cognizance of the offence and subsequently, the case was entrusted to the learned trial Court, where the charge against accused was framed, who pleaded not guilty and claimed trial.

4. At trial, the prosecution to prove its case has examined following witnesses:

1. PW-1. PC Muzaffar Hussain examined at Ex.3. He produced memo of arrest and recovery at Ex.3/A and memo of place of incident at Ex.3/B.
2. PW-2. Complainant ASI Sher Muhammad examined at Ex.4. He produced entry at Ex.4/A and F.I.R at Ex.4/B.
3. PW-3 Investigating Officer ASI Muhammad Ramzan examined at Ex.5. He produced letter addressed to I/C Forensic Laboratory and ballistic report at Ex.5/A and Ex.5/B.

These witnesses have been cross examined at length by the counsel for appellant.

5. Later on statement of accused was recorded U/S 342 Cr.P.C in which he denied the prosecution allegation and claimed his innocence. However, he did not examine himself on oath nor led any evidence in his defence.

6. Learned counsel for the appellant contended that the case is managed one and appellant is innocent and has been falsely implicated in this case; that the alleged pistol has been foisted upon him due to non-payment of illegal gratification; that no independent witness has been cited by complaint at the place of incident and the PWs being police officials are interested witnesses; that the learned trial Court has only believed upon the examination in Chief of the PWs and did not bother to consider the cross examination of witnesses while delivering the judgment and has miserably failed to properly evaluate the evidence; that learned trial Court while not discussing the cross examination of the witnesses has passed the impugned judgment in a hasty manner and the appellant ought to

have been acquitted, hence, the findings recorded by the trial Court requires interference by this Court. He lastly prayed for acquittal of the appellant from the charge.

7. Learned A.P.G. halfheartedly opposed the appeal on the ground that appellant has already been acquitted in cases registered against him at the same police station and the evidence on record is contradictory on material particulars of the case.

8. I have heard the learned counsel for appellant, learned A.P.G for the State and perused the material available on record.

9. I have noted number of contradictions in the evidence of prosecution witnesses such as PW-1 mashir PC Muzaffar Ali had deposed that they first time saw the accused at the distance of 20 feet and after seeing police party the accused run away upto 08 to 10 feet. Whereas, PW-2 ASI Sher Muhammad had deposed in cross examination that they first time saw the accused at the distance of 200 feet and after seeing police party the accused run away 15 / 20 feet. It has also come in the evidence of PW-1 PC Muzaffar Ali that when complainant prepared the mashirnama of arrest and recovery the case property was lying with PC Ahmed Nawaz and custody of accused was remained with PC Muzaffar Ali. Perusal of evidence of complainant ASI Sher Muhammad reflects that when he was preparing the mashirnama of arrest and recovery the case property was lying with PC Muzaffar Ali and custody of accused was remained with PC Ahmed Nawaz.

10. It is worth noting that according to the evidence of mashir PC Muzaffar Ali, they took about 10 minutes in preparation of mashirnama and other formalities at the place of incident, whereas Complainant ASI Sher Muhammad had deposed that they took about 50 minutes in preparation of mashirnama and other formalities at the place of incident. It is also noted that alleged incident took place on 28.12.2014 while the case property was sent to the ballistic expert for its examination and report on 31.12.2014, after the delay of about three (03) days of recovery, for which no satisfactory explanation has been furnished by the prosecution. During the course of arguments, I have specifically asked the question from learned A.P.G to explain the delay and also to explain that during this intervening period before whom the property was lying, he had no satisfactory answer with her.

11. It may be mentioned here that this is the case of advance information about the availability of appellant and it was noon time, despite of this fact prosecution did not bother to associate any private person either from the place where they received information or from the place of incident to act as mashir of arrest and recovery.

12. In the circumstances, I am of the view that the prosecution case is not free from doubts and it is well settled principle of law that even a single circumstance creating a reasonable doubt, the benefit of which, always goes in favour of accused, however, in the instant case there are material discrepancies and lacunas in the prosecution evidence. In this regard, reliance can be placed upon case of 'Tariq Parvez v. The State' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:

**"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as matter of right".**

13. In the light of what has been discussed above and case law, I am of the considered view that the prosecution has failed to prove its case against the appellant beyond any reasonable doubt, therefore, instant appeal is allowed, impugned judgment dated 30.07.2015 is set aside and the appellant is acquitted of the charge. The appellant is present on bail, his bail bond stands cancelled and surety discharged.

**JUDGE**

Tufail