

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-70 of 2016.

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing: 19 .05.2017.

Date of decision: 19.05.2017

Appellant Naseer: Through Zeshan Ali Burdi, Advocate.

The State Through Mr. Shahid Ahmed Shaikh, A.P.G.

===

J U D G M E N T :-

ABDUL MAALIK GADDI, J- Through instant appeal, the appellant has challenged the judgment dated 28.03.2016 passed by learned Vith-Additional Sessions Judge, Hyderabad, in Sessions Case No.458 of 2015 of P.S. Husri Hyderabad, Re: State vs. Naseer, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant in point No.2 (Para-15) of the judgment which reads as under:-

“16. In view of my findings on point No.1, the accused Naseer s/o Amir Bux Parhiyar is hereby convicted U/s 265-H(ii) Cr.P.C and sentenced for an offence punishable U/s 23-A Sindh Arms Act to undergo Rigor Imprisonment for Five years (05 years) and to pay fine of Rs.50,000/-. In case of failure in payment of fine, the accused shall suffer simple imprisonment for three months (03 months). He is produced in custody, he be remanded to custody to serve out the sentences awarded to him as above. He is in Jail since his arrest, therefore he is extended benefit of section 382-B Cr.P.C and his detention period in Jail in this case since from his arrest till today shall be adjusted towards sentences awarded to them as above. ”

2. Brief facts of the prosecution case as stated in FIR are that complainant ASI Allah Bux Panhwar of PS Husri Hyderabad arrested accused namely Naseer s/o Amir Bux Parhiyar in Crime No.52 of 2015 U/s 324, 353, 147, 148, 149 PPC was found in possession of one unlicensed 30-Bore TT pistol with magazine and four live bullets in presence of mashirs and also challaned in crime No.54 of 2015 of PS Husri (present case).

3. At trial, complainant PW-1 ASI Allah Bux was examined as Exh.04, he produced arrival and departure entries, memo of arrest and recovery at exh.4/A to Exh.4/C respectively. PW-2 ASI Wazeer Ali mashir of the incident, was examined at Exh.05 and then D.D.P.P for the State closed the side of prosecution vide statement Exh.06.

4. Statement of accused was recorded under section 342, Cr.P.C at Ex.07, wherein he denied the allegations leveled against him.

5. 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.

6. It is stated by the learned counsel for applicant that the case against appellant is false and has been registered due to enmity; that appellant was arrested from the thickly populated area, but

infact no independent witness has been cited as a witness of the incident; that whole case of the prosecution is based upon contradictory evidence of the complainant and Pw ASI Wazeer Ali, therefore no reliance can be placed; that appellant has been acquitted in the main case under crime No.52 of 2015, U/Ss.324, 353, 147, 148, 149 PPC, and this case is off-shot of that case, therefore according to him this appeal may be allowed and the appellant may be acquitted from the charge.

7. Learned A.P.G supported the impugned judgment by arguing that the impugned judgment has been passed by the trial court after perusing the documents and evidence of complainant and ASI Wazeer Ali.

8. I have heard the parties at length and have perused the documents and evidence on record. It is an admitted fact that this appellant has also been arrested in main case under crime No. 52 of 2015, U/Ss.324, 353, 147, 148, 149 PPC and in the said case he has been acquitted today by this Court and detail reasons has also been given in the said judgment. A part from this, it is alleged against the appellant that one unlicensed TT pistol of 30 bore with live bullets was recovered from him. It has been brought in evidence that incident took place in thickly populated area and the police party had already advanced information, but despite of this

fact, the complainant did not bother to take with him any independent person either from the place of information or from the place of incident. This aspect of the case create doubt in the prosecution case. In this case complainant is Investigating Officer of the case, therefore his investigation cannot safely be relied upon. I have examined the evidence so brought on record by the complainant ASI Allah Bux and Pw ASI Wazeer Ali, but their evidence is also found contradictory on material particulars.

9. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant and the learned trial court did not appreciate the evidence properly. It is settled position of law that if there is slight apprehension regarding prosecution case being untrue, its benefit extends to the accused, resultantly appeal is allowed. The impugned order is set-aside and the appellant is acquitted from the charge. He is present on bail, his bail bond stands cancelled and surety is discharged.

JUDGE.