

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-106 of 2015.

DATE ORDER WITH SIGNATURE OF JUDGE

Appellant: Through Syed Shafique Ahmed Shah, Advocate.

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

Date of hearing: 01 .06.2017.

Date of decision: 01 .06.2017.

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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 24.6.2015 passed by learned 2nd Additional Sessions Judge, Sanghar, in Sessions Case No.572 of 2014 of P.S. Sinjhor, Re: State vs. Muhammad Khan, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant as mentioned in point No.II (Para-24) of the judgment which reads as under:-

“24. Since prosecution has successfully proved its case against accused as discussed in point No.1, therefore, I am of the humble view that accused is returned guilty for keeping unlicensed weapon, therefore, I convict the accused Muhammad Khan under section 265-H(ii) Cr.P.C, for offence punishable under section 23(i) (a) Sindh Arms Act-2013 and sentenced him to undergo rigorous imprisonment for seven years, and to pay fine of Rs.10,000/-in default he shall further suffer simple imprisonment for six months. The benefit of section 382-B Cr.P.C, is extended to him. Accused produced in custody from District Jail Sanghar and is sent to Central Prison Hyderabad to serve out the sentence awarded to him in accordance with law.”

2. Brief facts of the prosecution case as stated in FIR are that complainant LNK Ameer Bux Incharge Check Post King Patti Mori after police encounter arrested the appellant in main case / crime No.104 of 2014 for offence U/Ss 324, 353, 427, 429, 34 PPC of PS Sinjhor and recovered from his possession one unlicensed TT pistol of 30 bore, hence this FIR.

3. At trial, prosecution examined P.C Ameer Bux at Exh.07; he produced memo of arrest and recovery at Exh.7/A, FIR at Exh.7/B, daily diary entry No.4 at Exh.7/C. PW-2 PC Muhammad Shabbir at Exh.8, he produced memo of injuries, memo of place of wardat at Exh.8/B. PW-3 PC Sardar at Exh.9. PW-4 ASI Mehmood Ahmed at Exh.10, he produced FSL report at Exh.10/A. PW-5 Medical Officer Dhanesh Kumar at Exh.11, who produced police letter at Exh.11/A, copy of referring letter at Exh.11/B, provisional medical certificate at Exh.11/C, final medical certificate at Exh.11/D, X-rays at Exh.11-E to Exh.11-H, letter No.6911, dated 26.12.2014 at Exh.11-I. Thereafter, learned DDPP for State closed his side vide statement at Exh.13.

4. Statement of accused was recorded under section 342, Cr.P.C at Ex.14, wherein he has 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 Pws, therefore no reliance can be placed; that appellant has been acquitted in the main case under crime No. 104 of 2014 for offence U/Ss 324, 353, 427, 429, 34 PPC of PS Sinjhoru, 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 passed after perusing the documents and evidence of complainant and Pws.

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. 104 of 2014 for offence U/Ss 324, 353, 427, 429, 34 PPC of PS Sinjhoru 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 was recovered from him. It has been brought in evidence that incident took place in thickly populated area and the complainant 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. Besides this, during alleged police encounter, nobody from police side has received bullet injury, even their motorcycles also did not hit any bullet or scratch. Further, nothing is available on record to show that the present appellant is previously convicted or he is disparate, dangers and hardened criminal. I have examined the evidence so brought on record by the complainant, but their evidence is 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 judgment is set-aside and the appellant is acquitted from the charge. He is in jail, be released forthwith, if not required in any other case.

JUDGE.