

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.28 OF 2020

Appellant:	Rehman Bacha @ Chota son of Shereen Bacha through Mr. Shamsul Hadj, Advocate
Respondent:	The State through Mr. Mohammad Iqbal Awan, Deputy Prosecutor General.
Complainant:	Through Iftikhar A. Gohar, Advocate
Date of Hearing:	17.04.2024
Date of Announcement:	19.04.2024

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Rehman Bacha has assailed the impugned judgment dated 23.10.2019 passed by learned Ist Additional Sessions Judge/Model Criminal Trial Court (MCTC-I) Malir Karachi in Sessions Case No.1009 of 2018 arising out of Crime No.303 of 2018 under Section 23(1)A Sindh Arms Act, 2013 registered at PS Quaidabad, Karachi whereby the appellant was convicted under section 265-H(ii) Cr.P.C. and sentenced to R.I. for 10 years. Since the accused has already been convicted in Sessions Case No.969/2018 and awarded life imprisonment with direction to pay compensation under section 544-A Cr.P.C. to the legal heirs of deceased to the sum of Rs.20,00,000/- (Rupees two million only) therefore both the sentences were ordered to run concurrently. Appellant was also extended benefit of section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 13.09.2018 at 1750 hours inside the house of accused situated at Muslimabad Colony near Muanwara Masjid Landhi Karachi a police party headed by SIP Zakirullah of PS Quaidabad recovered one unlicensed 30 bore pistol without number with four live bullets on his pointation, hence the aforesaid FIR was lodged,

3. After completing all the legal formalities, the charge was framed against the accused to which he pleaded not guilty and claimed trial of the case.
4. The prosecution in order to prove its case examined 03 prosecution witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him.
5. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against conviction.
6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 23.10.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.
7. I have heard the learned counsel for the appellant as well as learned Addl. Prosecutor General and learned counsel for the complainant and gone through the entire evidence which has been read out by the appellant, and the impugned judgment with their able assistance and have considered the relevant law.
8. This case is an off shoot case of the main case (Sessions Case No.969/2018) (The main case) whereby the appellant was convicted of murder under S.302 (b) and awarded life imprisonment with direction to pay compensation under section 544-A Cr.P.C. to the legal heirs of deceased to the sum of Rs.20,00,000/- (Rupees two million only).
9. This court has already acquitted the appellant in the main case vide judgment of even date largely on account of the appellant's identity as the person who murdered the deceased being in doubt. An aspect of the main case was that the appellant had also lead the police to the murder weapon (pistol) on his own pointation from a place which only he could have known about. This recovered pistol however when sent for FSL report with the empty recovered at the crime scene where only one shot had

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been fired produced a negative report and clearly was not the murder weapon and as such this court found as follows at para 12 (e) in the main case as under;

“That it was the prosecution’s case that after his arrest the accused lead the police on his pointation to the place where he had hidden the pistol (murder weapon) in his house. However when this pistol was sent for FSL with the empty recovered at the crime scene the FSL report was negative. Thus, the recovered pistol was not the murder weapon which begs the question as to why a person would produce an unlicensed pistol before the police simply to be charged with an offence under the Arms Act when it was not the murder weapon in the case under investigation. This does not appeal to logic, commonsense or reason and suggests that the pistol was foisted on him”.

10. Thus, based on the evidence on record and in particular the above finding in the main case there are doubts that the pistol (murder weapon) was recovered on the pointation of the accused and that it belonged to him and that rather the pistol might very well have been foisted on the accused in order to strengthen the prosecution case.

11. Thus, based on the above discussion, I find that the prosecution has NOT proved its case against the appellant beyond a reasonable doubt and by extending the appellant the benefit of the doubt for the reasons discussed above, which he is entitled to as a matter of right as opposed to concession, I hereby set aside the impugned judgment, allow the appeal and acquit the appellant of the charge. The appellant shall be released unless he is wanted in any other custody case.

12. The appeal stands disposed of in the above terms.