

67

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Appeal No. S- 55 of 2011.

Date of hearing
23.08.2017.

Order with signature of Judge

For hearing of case.

1. For orders on office objections.
2. For orders on M.A. No. 1358/2011.
3. For hearing.

~~Mr. Habibullah G. Ghouri, Advocate for Appellant.~~ *A in person*
Mr. Aijaz Mustafa Samtio, DDPP.

For reasons to be recorded later on, the appeal is allowed. The conviction and sentence awarded to appellant vide impugned judgment dated 18.05.2011 passed in Sessions case No.471/2000 arising out of Crime No.68/2000 of Taluka P.S Larkana, is set aside. The appellant is present on bail, his bail stands cancelled and surety discharged.


JUDGE

Ansst./*

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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

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Appellant in person.
Mr. Aijaz Mustafa Samtio, DDPP.

Omar Sial, J: Appellant Muhammad Ibrahim has impugned a judgment dated 18.05.2011 passed by the learned 4th Additional Sessions Judge at Larkana. In terms of the said judgment the Appellant was convicted and sentenced to suffer rigorous imprisonment for a period of 5 years and a fine of Rs.2,000/- (or suffer another 2 months simple imprisonment in default) for an offence under Section 13 (e) of the Pakistan Arms Ordinance 1965.

Brief facts of the prosecution case are that on 08.6.2000, the appellant was already confined at the CIA Centre in Larkana in crime No 08 of 2000 registered under Sections 302, 324 and 34 P.P.C, when during interrogation he agreed to produce the crime weapon. He led the police party to the Bazigar Bridge on the Rice Canal and from a hedge near a tree he produced a Kalashnikov wrapped in a plastic bag along with 16 bullets. FIR bearing number 68 of 2000 was registered under Section 13 (e) of the Pakistan Arms Ordinance, 1965.

The charge against the Appellant was framed on 16.5.2001, to which the Appellant pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined two witnesses, PW-1 Sub Inspector Mohammad Ashraf was the complainant and the Investigating Officer. PW-2 Syed Abdul Rasheed was the witness to the memo of arrest and recovery

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The Appellant recorded his statement under Section 342 Cr.P.C. on 09.10.2001, in which he pleaded his innocence and claimed that he had been falsely involved in the murder case (being FIR No.8 of 2000) due to enmity; that he already possesses two licensed weapons; the licenses of which he produced.

I have heard the Appellant in person and have also heard the learned DDPP. My observations are as follows.

- (i) The alleged crime weapon recovered was based on a confession made by the Appellant while in custody in another crime. The witnesses to the memo of recovery were admittedly both taken by the PW-1 along with him and were not natural witnesses at the place where the discovery was made, in fact they admittedly lived 20-25 kilometers away. Further, the recovery was made from a place where admittedly shops were present and was accessible to the public. PW-1 deposed that the land from where the recovery was made was cultivated land, whereas PW-2 stated that the land was not cultivated. In these circumstances no sanctity can be attached to the recovery made.
- (ii) No description of the weapon recovered was given in the memo of arrest and recovery. No report of the ballistic examiner was ever produced in trial even though PW-1 claimed that he had sent it for examination. In fact, the weapon itself was not produced in trial on the grounds that the same had been burnt by crowds during the assassination of a political leader. A most unconvincing letter from the office superintendent of the Sessions Court in District Kamber Shahdadkot was produced to evidence the same even though the case pertained to District Larkana.
- (iii) The murder case against the Appellant has been put in abeyance by the learned trial Court on the grounds that for a considerably long period the prosecution has failed to produce its witnesses.
- (iv) If the plea of the defence is put in juxtaposition to the prosecution case, it is the defence plea that sounds more credible. The prosecution failed to prove its case beyond reasonable doubt, the benefit of which doubt should have gone to the accused.



13

Also are the reasons for my short order of 23/08/2017, in which
of which the appeal was allowed and the Appellant acquitted of the
charge. As he was present on bail, it was further ordered that his bail
bond is cancelled and surety discharged.

Ben Paul
31/8/17
JUDGE