

Appellant : Muhammad Hussain
through Mr. Habibullah G. Ghouri,
Advocate.

The State : Through Sardar Ali Shah Rizvi D.P.G.

Date of hearing : 13.11.2017.

Date of Judgment : 13.11.2017.

J U D G M E N T.

Muhammad Saleem Jessar -J- Appellant Muhammad Hussain has challenged his conviction order dated 01.11.2011, passed by Additional Sessions Judge, Kashmore in Sessions Case No.21/2011, Re: State V. Muhammad Hussain Mazari, arising out of FIR No.110/2010 registered at Police Station Guddu, under Section 13(d) Arms Ordinance 1965, whereby the appellate was convicted and sentenced to suffer R.I for five years and to pay Rs.5000/- as fine and in case of default of payment of fine, he shall suffer S.I for one month more. However, benefit of Section 382-B Cr.PC was extended to him.

2. The crux of prosecution case as unfolded by the complainant H.C-Muhammad Ibrahim Ogahi in the F.I.R are that on 12.9.2010 at 2100 hours, complainant HC-Muhammad Ibrahim Ogahi lodged F.I.R. on behalf of the State with P.S. Guddu, alleging therein that on the relevant day, the accused Muhammad Hussain Mazari was arrested in Crime No.109/2010 under Section 324, 353, 368, 427, 148, 149 PPC of PS Guddu and the accused by keeping a Kalashnikov without number alongwith magazine containing five live bullets in his possession committed an offence punishable under Section 13-D of Arms Ordinance, 1965, therefore, the separate FIR was registered by the complainant.

3. After completion of usual investigation, police submitted challan of the case showing present accused Muhammad Hussain in custody and thereafter, he sent the case before the Sessions Court, Kashmore @ Kandhkot for trial.
4. The necessary documents were supplied to the accused at Ex-1, and a formal charge was framed against accused at Ex.2, to which he pleaded not guilty and claimed to be tried vide his plea at Ex.2-A.
5. To substantiate its case, the prosecution examined PW-1 complainant HC Muhammad Ibrahim at Ex.3, who produced attested Photostat copy mashirnama of arrest and recovery at Ex.3-A, F.I.R. at Ex.3-B, PW2 HC Abdul Razzaque at Ex.4, PW-3 S.I.O Inspector Abdul Ghafoor at Ex.5. Thereafter, learned A.D.P.P for the State appearing on behalf of the State closed the prosecution side at Ex.06.
6. The statement of accused u/s 342 Cr.P.C was recorded at Ex.7, wherein he denied the allegation and claimed to be innocent. However, he did not examine himself on oath nor examined any defence witness to disprove the prosecution case.
7. The learned trial court after full dressed trial and hearing learned counsel for the parties, convicted and sentenced the appellant as stated above.
8. I have heard learned counsel for the appellant as well as learned DPG for the State and have gone through the material made available on the record.
9. Mr. Habibullah G. Ghouri counsel for the appellant mainly argued that alleged Kalashnikov was neither sent to the Ballistic Expert for his opinion nor any such report has been produced to show whether alleged Kalashnikov was in working condition or not.

He contended that there are material contradictions in between testimony and prosecution witnesses which have not been considered by the trial Court. He further contended that complainant himself has acted as investigating officer which is the violation of Police Order 2002. He has further submitted that there was joint mashirnama in respect of three cases including the alleged recovery of abductee which according to him was not permitted by law. He has also focused that instant case is offshoot of main case in which the appellant has been acquitted by the ATC court. In support of his contention learned counsel for the appellant has placed reliance upon the cases of *Muhammad Daud and 08 others VS the State 2015 P.Cr.L.J 316 (Sindh)* and case of *Mumtaz Ali & another Vs The State 2013 YLR 1619 (Sindh)*. He lastly contended that entry through which the complainant had left police station has not been produced by him before the trial court thus it is hard to believe that the complainant party had left for the purpose mentioned in the FIR and therefore, he advanced that case against appellant has become doubtful which entitles the appellant for acquittal.

10. On the other hand, Syed Sardar Ali Shah Rizvi learned Deputy Prosecutor General appearing on behalf of the state after going through the evidence and material available on record extended his no objection and, therefore, did not support the impugned judgment on the ground that evidence of P.Ws have not been considered and believed by the trial court in main case, therefore, in this case their evidence cannot be believed in toto. In support of his contention he relied upon case of ***Fida Hussain V. the State 2012 Cr.LJ 764 Qutta***).

11. I have given anxious consideration to the arguments advanced by the counsel for the appellant and the State. Apparently, the

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appellant was arrested after an encounter with police and joint mashirnama of his arrest, recovery of weapon, recovery of alleged abductee/kidnaped was prepared. The Kalashnikov, as is manifest from record, was not sealed on the spot nor was sent to Ballistic Expert for his opinion whether it was in working condition or not. Further, the instant case being offshoot of main case viz. Crime No.109 of 2010 under Section 324, 353, 368, 427, 148, 149 PPC registered with PS Guddu and both cases are also offshoot of main crime No.108 of 2010 PS Guddu which was tried by ATC Court Jacobabad vide judgment dated 14.05.2015 in Special Case No.40 of 2010 (*The State Vs Muhammad Hussain & others*). It is settled law that if an individual has not been convicted in main case then it is hard to maintain the conviction of an offshoot crime/case. In the instant case, the alleged weapon was not sealed on the spot nor was sent to Ballistic Expert for examination, therefore, it cannot be safely relied upon to maintain the conviction against the appellant. Further, learned DPG has also extended his no objection for grant of this appeal and even not supported the impugned judgment.

12. In view of the above, it appears that prosecution has miserably failed to prove its case beyond any reasonable shadow of doubt. Therefore, vide short order dated 13.11.2017 instant appeal was allowed, the conviction and sentence awarded to the appellant Muhammad Hussain Mazari vide judgment dated 01.11.2011, passed by learned Additional Sessions Judge, Kashmore was set aside and the appellant was acquitted of the charge. Above are the reasons for the same.

JUDGE