

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Criminal Appeal, No. 5, 72 of 2024

Mir Nooroze Ali

Appellant

V/S

The state

Respondent

SINDH HIGH COURT

Composition of Bench Before **Mr. Justice Muhammad Saleem Jessar**

Single / D/B

Date of: Hearing : 01/01/2025

Date of: Order : 01/01/2025

Date of: Reasons

- (a) Judgment approved for
Reporting

YES
NO

CERTIFICATE

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ reverses/ explains a previous decision.

Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used. The Reader must attach it to be the top of the first page
Of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is
Approved for reporting.

(iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. S-72 of 2024

Appellant:

Mir Nooroze Ali son of Muhammad Ali Domki,
Through M/s Abdul Rehman Bhutto and Shakeel
Ahmed Abro, Advocates.

The State:

Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General, Sindh.

Date of Hearing : 01.01.2025

Date of Judgment : 01.01.2025

J U D G M E N T

Muhammad Saleem Jessar, J.- Through instant criminal appeal, the appellant has called in question the Judgment dated 25.07.2024 (impugned judgment) penned down by learned Additional Sessions Judge-II, Kandhkot, vide Sessions Case No.48 / 2024 (re: State Vs. Mir Nooroze Ali Domki). The case is outcome of Crime No.75/2024, registered at P.S A-Section, Kandhkot, for offence under Section 23(1)(a) & 25 of Sindh Arms Act, 2013. After recording evidence and determination of points, the trial Court held the appellant guilty of charge u/s 25, Sindh Arms Act, 2013, convicted and sentenced him to undergo R.I. for 10(ten) years, and to pay fine of Rs.200,000/-. In case of default, the appellant was directed to undergo S.I. for two years more. However, the benefit of Section 382-B, Cr.P.C was extended to the appellant/convict.

2. According to the case of prosecution, on 18.03.2024, at about 1200 hours, the appellant was allegedly apprehended by Sadar Ali and Noor Muhammad, both by caste Shaikh, at Daya Muhalla of Kandhkot town and an unlicensed Pistol with magazine containing 03 live bullets was recovered from him; whereafter, they took and handed over the custody of appellant along with recovered weapon and a GLI Car in accidented condition to HC Abdul Jabbar, being duty officer at PS A-Section, Kandhkot, who finding the aforementioned weapon unlicensed sealed it under memo and booked the appellant in this case. Besides,

(PLD 1996 Karachi 345) and *Fida Hussain v. The State* (2012 PCr.LJ 226).

9. I have heard learned Counsel for the appellant as well as learned Addl. P.G for the State and have perused the material available on the record.

10. From perusal of the record it appears that the recovery shown from the appellant originates from the incident of Crime No.74/2024 lodged by one Shaman Ali Shaikh at same police station for offence u/s 365-B, PPC alleging abduction of his wife Mst. Asia on 18.3.2024, at 12.00 o'clock, by the appellant and his brother Sherroz Khan on gunpoint in a car; however, due to accident of the car, the appellant was apprehended along with pistol being allegedly carried by him and was produced before police. From perusal of judgment dated 29.06.2024 rendered in the main case based on Crime No.74/2024, copy whereof is available on record, it appears that the trial Court has acquitted the appellant, mainly for the reason that alleged abductee Mst. Asia did not support the prosecution case, stating that no such incident had occurred. It is surprising to note that the trial Court, on one hand, believing the evidence of Mst. Asia, the alleged abductee of Crime No.74/2024, acquitted the appellant of the charge in said crime, then on what basis the evidence of mashir/eyewitness Noor Muhammad, who had produced the appellant before police claiming to have apprehended him along with the weapon after the incident of Crime No.74/2024, was believed. It appears that the trial Court has not properly appreciated the entire material and not applied judicious mind to evaluate/appreciate the facts and circumstances of case in hand. In such circumstances, the other oral and documentary evidence brought on record, is of no effect; rather, the very recovery of offensive weapon becomes doubtful.

11. Since the appellant has been acquitted from the charge of main case; the propriety of law demands, the appellant should also be acquitted from the charge of instant case, which is offshoot of said main case. In this connection, reliance may be placed on the case of *Yasir Chaudhry Vs. The State* reported in **2012 MLD 1315**, wherein it was held by learned Bench of the Lahore High Court as under:-

"In the case reported as *Manjhi v. The State* (PLD 1996 Karachi 345) it has been held that when the accused has been acquitted in the main case, he would become entitled to acquittal in a case which is offshoot of the said case. Same is the position here, as the present lis is an offshoot of the main murder case, so, respectfully following the dictum laid down in the judgment supra, this petition is allowed and the application of the petitioner under section 249-A Cr. P.C. is accepted and the petitioner is **acquitted** from the charge in case F.I.R. No.17 of 2003 dated 12.1.2003 registered under section 7 of the Surrender of Illicit Arms Act No.XXI of 1991 with Police Station Civil Lines, Bahawalpur."

12. Keeping in view above factual as well as legal position, it can safely be held that the accused / appellant deserves his acquittal in this offshoot case as well.

13. For what has been discussed above, instant Criminal Appeal is allowed, the impugned judgment dated 25.07.2024, handed down by learned Additional Sessions Judge-II, Kandhkot, vide Sessions Case No.48 of 2024 (re: State Vs. Mir Nooroze Ali Domki), being outcome of FIR No.75/2024 registered at Police Station A-Section, Kandhkot, is hereby set aside. Consequently, the appellant is acquitted of the charge. The appellant shall be released forthwith, if his custody is not required in any other case.

JUDGE

Qazi Tahir PA/*