

ORDER SHEET

THE HIGH COURT OF SINDH CIRCUIT COURT AT LARKANA

Criminal Appeal No.S-130 of 2019

Date	Order with signature of Judge
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1. For orders on office objection "A".
2. For hearing of M.A.No.5747/2019 (426 Cr.P.C.)
3. For hearing of main case.

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31.12.2019

Mr. Rafiq Ahmed K. Abro, Advocate for the appellant.

Mr. Aitbar Ali Bullo, Deputy Prosecutor General Sindh for the State.

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Learned advocate for the appellant submits that the present case is offshoot of the main case being outcome of Crime No.07/2019, registered at Police Station Dodapur for the offence under section 302 P.P.C., in which the appellant has been acquitted by way of Judgment dated 03.12.2019, passed in Sessions Case No.177 of 2019, *re-State v/s. Rasool Bux*. In support of his contentions, learned counsel for the appellant has placed on record certified copy of the Judgment, available at Annexure "B", page 25 of the Court file. He next submits that even on merits the prosecution evidence is full of contradictions and therefore prayed that the appellant may be acquitted of the charge by granting this Criminal Appeal.

Learned Deputy Prosecutor General, Sindh has recorded no objection.

Heard arguments of the learned counsel for the appellant and the learned Deputy Prosecutor General, Sindh.

For the reasons to be recorded later on instant Criminal Appeal is hereby allowed. Consequently, the impugned Judgment dated 03.12.2019, handed down by the learned Additional Sessions Judge-II, Jacobabad in Sessions Case No.178 of 2019, *re-State v/s. Rasool Bux*, being outcome of Crime No.08 of 2019, registered at Police Station Dodapur for the offence under sections 23(1)(a) and 25 of the Sindh Arms Act, 2013, is hereby set aside. Resultantly, appellant is hereby acquitted of the charge. He is in custody; therefore, he shall be released forthwith if his custody is not required in any other criminal case by the jail authorities.



Judge

Manzoor

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**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
AT LARKANA**

Cr. Appeal No. S-130 of 2019

Date of hearing: : 31.12.2019

Date of judgment : 31.12.2019

Appellant Rasool Bux Dasti : through Mr. Rafiq Ahmed K. Abro, Advocate.

The State : through Mr. Aitbar Ali Bullo, D.P.G. Sindh.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J:- Through this Criminal Appeal appellant Rasool Bux Dasti son of Ghulam Nabi has assailed judgment dated 03.12.2019 handed down by learned IIInd Additional Sessions Judge, Jacobabad in Sessions Case No.178 of 2019 (re: The State Vs. Rasool Bux) being outcome of FIR No.08/2019 under section 23(1)(a) and 25 of Sindh Arms Act, 2013, registered at P.S. Dodapur, whereby appellant has been convicted for offence punishable under abovesaid Section and sentenced to suffer R.I. for five (5) years and to pay fine of Rs.20,000/- (Rupees Twenty thousand only) and in case of default in payment of fine, to suffer S.I. for three months more. However, appellant was extended benefit of section 382-B Cr.P.C.

2. Concisely, the facts of prosecution case are that complainant Inspector / SHO Deedar Hussain Ghumro lodged FIR on 03.05.2019 at 1930 hours, stating therein that on 03.05.2019, he along with PC Mumtaz Ali and PC Abdul Basit in police mobile driven by PC Barket Ali, left police station under roznamcha entry No.19 at 1710 hours, for patrolling. While patrolling, he received spy information that accused Rasool Bux required in FIR No.07/2019 of PS Dodapur offence under section 302 PPC, is standing at link road leading to Bosan, near Peer Wah bridge. After receipt of such information, they proceeded and reached to the place informed and saw that, one person having gun was standing there, who seeing police party, tried to escape away, but he was apprehended at about

10 to 15 paces away. He was enquired about his particulars, on which he disclosed his name as Rasool Bux Dasti and about gun, he disclosed that, it is without license and after searching his body, three live cartridges were recovered from his right pocket shirt and memo of arrest and recovery was prepared in presence of mashirs and FIR was registered against him.

3. After usual investigation, challan was submitted against the present accused before the concerned court. A formal charge was framed against the accused to which he pleaded not guilty and claimed his trial vide plea as Ex. 2/A.

4. In order to prove its case, prosecution examined PW-1, complainant Inspector Deedar Husain at Ex. 03, who produced copy of memo of arrest and recovery as Ex.3/A, roznamcha entries of departure and arrival as Ex.3/B, copy of FIR as Ex.3/C and FSL report as Ex.3/D. P.W. Mumtaz Ali was examined at Ex.4. Thereafter, learned DDPP for State closed prosecution side vide his Statement Ex.5.

5. Statement of accused under Section 342 Cr. P.C. was recorded vide Ex.6 wherein he denied the allegations leveled against him. However, neither he examined himself on oath, nor produced any witness in his defence.

6. After formulating the points for determination, recording evidence of prosecution witnesses and hearing counsel for the parties, learned trial Court vide impugned judgment convicted and sentenced the accused / appellant, as stated above. Against the said judgment instant appeal has been preferred by the convicted accused.

7. I have heard learned counsel for the appellant as well as learned D.P.G. appearing for the State and also perused the material available on the record.

8. Learned counsel for the appellant submitted that appellant was booked in 02 crimes viz. Crime No. 07 of 2019 PS Dodapur, under Section 302 PPC and the present case under Section 23 (1) (a) of Sindh Arms Act, 2013. According to him, in the main Crime No.07/2019, appellant has already been acquitted of the charge by the trial Court in Sessions Case No.177 of 2019. In support of his contention he referred to the certified copy of Order dated 03.12.2019 available at page 25 of the Court file, whereby appellant has been shown to have been acquitted from the charge

in the main case under section 302 PPC. According to him, present case is the outcome and offshoot of the aforesaid main case in which same set of evidence produced against the accused has already been disbelieved by trial Court, hence propriety of law demands that same treatment be meted out in favour of the accused in the instant case too.

9. Learned D.P.G. appearing for the State, could not controvert the above submissions made by learned counsel for the appellant and has candidly recorded his no objection to the grant of instant appeal and acquittal of the accused / appellant.

10. Needless to emphasize the well settled principle of law that if an accused has been acquitted in the main case then he is also entitled to be acquitted in the case which is offshoot of the main case. In the case reported as Yasir Chaudhry Vs. The State reported in 2012 MLD 1315 it was held by Honourable 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."

11. Keeping in view above legal position, it can safely be held that when the accused / applicant has been acquitted in the main cases and instant case being offshoot of those cases, the accused / appellant deserves to be acquitted in this case also.

12. Apart from above, there are also other discrepancies / legal flaws in the prosecution case which also put dents in the prosecution case and go in favour of the accused. Even in the main case the complainant did not name present accused and stated that one unidentified person with muffled face armed with gun directly fired at Mst. Nimani, the daughter of complainant in the main case. The complainant as well as alleged eye witnesses of the incident did not identify the present accused to be the same who fired at the deceased. It would be advantageous to reproduce hereunder the relevant portion from the said judgment dated 02.12.2019 passed in the main case:

"The entire ocular account given by complainant and eye witnesses have not supported prosecution case on point of identification of present accused at the time of commission of alleged offence. All the eye witnesses deposed that, on the night of incident, one unidentified culprit with muffled face armed with gun directly fired at Mst. Nimani the daughter of complainant, which hit her and she died on spot. They further deposed that, accused present in Court is not same, as he was not available at the time and place of incident in commission of alleged offence. Mashirs Karim Dad and Ghulam had denied that, memo of place of incident and Danishnama were prepared in their presence and thereon LITs. were obtained from them at spot."

13. There also seems to be violation of the provisions of Section 103 Cr. P.C. as no independent witness of the locality was associated as mashir of the alleged arrest of the accused and recovery of the gun from him. In this respect, reference may be made to the case of State Vs. Bashir and others (PLD 1997 S.C. 408), wherein Honourable Supreme Court held as under:

"As regards above second submission of Mr.M.M. Aqil, it may be observed that it has been repeatedly held that the requirements of section 103 Cr.P.C. namely, that two Members of the public of the locality should be Mashirs of the recovery, is mandatory unless it is shown by the prosecution that in the circumstances of a particular case it was not possible to have two Mashirs from the public."

14. Apart from above, there is also unexplained delay in sending the crime weapon to the Ballistic Expert as the same was allegedly recovered from the accused on 03.05.2019 where it was sent to the Ballistic Expert on 07.5.2019 i.e. after about four days as is evident from the FSL report ex.03/D wherein against the column "Date Received", "07.05.2019" has been written. In the case reported as Samandar @ Qurban and others Vs. The State reported in 2017 MLD 539 Karachi, while dealing with the point of delay in sending the weapon to Ballistic Expert, this Court held as under:

"Apart from above sending of crime weapon to ballistic expert for forensic report with delay of 20 days of their recovery also added further doubt into the prosecution case, thus in view of above coupled with non-compliance of section 103, Cr. P.C., it can safely be presumed that alleged recovery of crime weapon was not made from the possession of the appellants as alleged by the prosecution."

15. In the case reported as Yaqoob Shah Vs. The State (1995 SCMR 1293) Honourable Supreme Court held that *the report of the Fire-Arm*

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Expert was of no avail to the prosecution as the crime empties and the fire-arms allegedly recovered from the accused were sent to Forensic Science Laboratory after delay. Reference in this respect may also be made to the decision reported as Ghulam Hussain and two others Vs. State (1998 P.Cr.L.J.779). In the circumstances, such reports of the ballistic expert might be in positive, would lose its sanctity.

16. For the foregoing reasons by a short order passed on 31.12.2019, instant appeal was allowed. Consequently, impugned judgment dated 02.12.2019 handed down by learned 2nd Additional Sessions Judge, Jacobabad in Sessions Case No.178 of 2019 (re: The State Vs. Rasool Bux) being outcome of FIR No.08/2019 under section 23(1)(a) of Sindh Arms Act, 2013, registered at P.S. Dodapur, was set aside and appellant Rasool Bux Dasti son of Ghulam Nabi was acquitted of the charge and was ordered to be released forthwith if his custody is not required in any other criminal case by the jail authorities.

17. Above are the reasons for the said short order.



JUDGE