

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.S-62 of 2020

Appellant Abdul Nabi : Through Mr. Safdar Ali Ghouri, holding brief
alias Raees Brohi : Mr. Asif Ali Abdul Razak Soomro, Advocate.
(present on bail)

The State : Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General.

Date of hearing : 01.04.2022.

Date of Judgment : 01.04.2022.

J U D G M E N T

Muhammad Saleem Jessar, J.- Through this appeal, Appellant has assailed Judgment dated 15.10.2020, handed down by learned Additional Sessions Judge-II, Jacobabad, in Sessions Case No.280/2016 (re: The State Vs. Abdul Nabi *alias* Raees Brohi), being outcome of FIR No.32/2016 registered at Police Station Mouladad, under Section 23(i)(a) and 25 of Sindh Arms Act, 2013, whereby he convicted the accused / appellant for the offence punishable under Section 25 of Sindh Arms Act 2013 and sentenced him to undergo R.I. for five (5) years, with fine of Rs.50,000/-. In case of default, appellant was directed further to undergo S.I for six months. However, the appellant was extended benefit of Section 382-B, Cr.P.C.

2. The crux of the prosecution case are already mentioned in the FIR as well as impugned judgment, therefore, there is no need to reproduce the same.

3. A formal charge was framed against the accused vide Ex.02, to which he pleaded not guilty and claimed to be tried vide his plea Ex.2/A.

4. In order to prove its case, prosecution examined PW-1/ASI Suhrab Odho at Ex.03, PW-2/PC Zamir Hussain at Ex.05. Thereafter, learned DDPP closed the side of prosecution vide his Statement Ex.07

5. Statement of the accused was recorded under section 342 Cr.P.C. vide Ex.08 wherein he denied the prosecution allegations and claimed to be innocent. However, neither he examined himself on oath nor produced any witness in his defence.

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

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

8. Learned counsel holding brief, at the very outset submits instant case is offshoot of main Crime vide F.I.R. No.63/2019 registered at P.S. Mouladad, under Sections 302, 148, 149, 337-H(2), PPC. He next submits that said case, after challan, was tried by the learned 1st Additional Sessions Judge/Model Criminal Trial Court-I, Sukkur, vide Sessions Case No.63/2019 (re- The State Vs. Ali Hyder & others). He further submits that after full-dressed trial the appellant and co-accused have been acquitted of the charge in the said main case by the learned trial Court vide judgment dated 09.09.2021. He further submits that instant case, being its offshoot, the appellant prays that he may also be acquitted of the charge in the light of dicta laid down by this Court in the case of *Manjhi v. The State (PLD 1996 Karachi 345)*. In support of his contention, he has placed on record certified copy of the judgment dated 09.09.2021 passed in the main case.

9. Learned Additional Prosecutor General has frankly conceded to the submission of learned counsel and has candidly given his No Objection to the grant of instant appeal.

10. I have gone through R&Ps of the case and judgment dated 09.09.2021 passed by the trial Court, whereby appellant as well as co-accused were acquitted of the charge of main case being outcome of Crime No.63/2015 of P.S Mouladad. Perusal of said judgment reveals that the eyewitnesses of the main case/crime, namely, PW-1

complainant Attaullah and PW-2 Tayyab examined before the trial Court categorically deposed that the appellant and co-accused were not the real culprits of the offence.

11. Heard arguments, record perused. As stated above, instant case is offshoot of main Crime No.63/2015 vide Sessions Case No.63/2019 (re-The State Versus Ali Hyder and others), the appellant, as appears from record, had already been acquitted from the charge of main case; hence, propriety of law demands, appellant should be acquitted from the charge of instant case.

12. It seems that the legal position in such a situation, as enunciated by the Superior Courts, is that when an accused has been acquitted in the main case, he would be entitled to acquittal in a case which is offshoot of the main case. In this connection, reference may be made to the case of *Yasir Chaudhry Vs. The State* reported in **2012 MLD 1315**, wherein 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 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."*

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

14. As stated above, learned Additional Prosecutor General has also not controverted this legal position and has recorded his No Objection to the grant of instant appeal.

15. Accordingly, instant Criminal Appeal is hereby allowed. Consequently, impugned judgment dated 15.10.2020, handed down by learned Additional Sessions Judge-II, Jacobabad in Sessions Case No.280/2016 (re:The State Vs. Abdul Nabi *alias* Raees Brohi), being outcome of FIR No.32/2016 registered at Police Station Mouladad, under Section 23(i)(a) & 25 of Sindh Arms Act, 2013, is hereby set aside and appellant Abdul Nabi *alias* Raees

son of Ali Dost Brohi is acquitted of the charge. He is present on bail, therefore, his bail bonds are hereby cancelled and surety stands discharged.

~~JUDGE~~

Qazi Tahir PA

The above order has been complied
On 01-01-2023

Accountant