

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. S-17 of 2022

Appellant Mushtaque : Through Mr. Ahmed Bux Abro, Advocate  
Dero (on bail).

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

Date of hearing : 20.05.2022.

Date of Judgment : 20.05.2022.

JUDGMENT

**Muhammad Saleem Jessar, J.-** Through this appeal, Appellant has assailed Judgment dated 20.04.2022, handed down by learned Additional Sessions Judge-IV, Dadu, in Sessions Case No.556/2021 (re: The State Vs. Mushtaque Dero), being outcome of FIR No.165/2021, registered at Police Station K.N. Shah, under Section 23 of Sindh Arms Act, 2013, whereby he convicted the accused / appellant for offence punishable under Section 23 of Sindh Arms Act 2013 and sentenced him to undergo R.I. for one (01) year, and to pay fine of Rs.10,000/- In case of default, appellant was directed to undergo S.I for one month more. 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 complainant SIP Naimatullah Babr at Ex.03 and PW-2 mashir Riaz Ahmed at Ex.04. Thereafter, learned DDPP closed the side of prosecution vide his Statement Ex.05.

5. Statement of the accused was recorded under section 342, Cr.P.C. vide Ex.06, 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 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 for the appellant at the very outset submits instant case is offshoot of main Crime vide F.I.R. No.164/2021 registered at PS K.N. Shah, under Sections 302, 311, 504, PPC. He next submits that said case, after challan, was tried by the learned Additional Sessions Judge-IV, Dadu, vide Sessions Case No.555/2021 (re- The State Vs. Mushtaque Dero). He further submits that after full-dressed trial the appellant has been acquitted of the charge in the said main case by the learned trial Court vide judgment dated 30.03.2022. 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 contentions, he has placed on record certified copy of the judgment dated 30.03.2022 passed in the main case.

9. Learned Additional Prosecutor General has frankly conceded to the submission of learned counsel for the appellant.

10. I have gone through R&Ps of the case and impugned judgment dated 30.03.2022 passed by the trial Court, whereby appellant was

acquitted of the charge of main case being outcome of Crime No.164/2021 of P.S K.N. Shah. Perusal of said judgment reveals that the eyewitnesses of the main case/crime, namely, complainant Khalid Hussain and mashirs Mohammad Juman Dero and Ali Bux examined before the trial Court did not support the prosecution case and were declared hostile. However, they were subjected to cross-examination by the ADPP, even then nothing was brought out from their mouth to support the prosecution.

11. Heard arguments, record perused. As stated above, instant case is offshoot of main Crime No.164/2021 vide Sessions Case No.555/2021 (re-The State Versus Mushtaque Dero), 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 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."*

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

14. As stated above, learned Additional Prosecutor General has also not controverted this legal position.

15. Accordingly, instant Criminal Appeal is hereby allowed. Consequently, impugned judgment dated 20.04.2022, handed down by learned Additional Sessions Judge-IV, Dadu in Sessions Case No.556/2021 (re:The State Vs. Mushtaque Dero), being outcome of FIR No.165/2021 registered at Police Station K.N. Shah, under Section 23 of Sindh Arms Act, 2013, is hereby set aside and appellant Mushtaque son of Dhani Bux Dero is acquitted of the charge. He is present on bail, therefore, his bail bonds are hereby cancelled and surety stands discharged.



JUDGE

The above order has been complied

On 03-06-2022

Accountant

Gazi Tahir PA