

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-02 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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Appellant Shaadan In person.

The State Through Mr. Shahid Ahmed Shaikh, A.P.G.

Date of hearing: 29 .05.2017.

Date of decision: 29.05.2017

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J U D G M E N T :-

ABDUL MAALIK GADDI, J- Through instant appeal, the appellant has challenged the judgment dated 30.03.2015 passed by learned Additional Sessions Judge, Kotri, in Sessions Case No.110 of 2014 of P.S. Kotri, Re: State vs Shaadan, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant in point No.2 of the judgment which reads as under:-

“On my findings on point No.1, the prosecution has been successful to prove it’s case beyond all reasonable doubts against accused Shaadan for offence under Section 23(A) Sindh Arms Act, 2013 therefore he is convicted and sentenced to suffer R.I for 05-years with fine of rs.10,000/- (ten thousands), in case of nonpayment of fine amount, he shall further undergo S.I for 03-months. The accused shall be entitled to benefit U/s 382-B Cr.P.C. Accused is produced in custody he is sent to jail, with directions to serve out above sentence. ”

2. Brief facts of the prosecution case as stated in FIR are that complainant ASI Manzoor Hussian Babar, INcharge PP Site, Kotri

left P.P alongwith his subordinate staff LNK Abdul Latif and PC Abdul Majeed on motorcycle for patrolling with ammunition, vide entry No.05 at 0930 hours, after patrolling different places, when they reached at Awami Chowk, Site Kotri, noticed a person coming on link road from Khursheed Chowk side, who on seeing police party in uniforms, started to run towards bushy plant on western side of the road, the police suspected him, encircled and apprehended him at 1500 hours and conducted his personal search, from which a 12-bore pistol was secured from the fold of shalwar of accused, a live cartridge from the said pocket of his shirt as well as Rs.30/-from the front pocket of shirt of accused were recovered. On enquiry, accused disclosed his name as Shaadan s/o Peeral Chandio and on further enquiry, accused disclosed the pistol to be without license. Thereafter, complainant prepared such memo on spot in presence of mashirs LNK Abdul Latif and PC Abdul Majeed and then brought the accused and recovered property at P.P. where he kept such entry, which was subsequently incorporated in the book of 154 Cr.P.C at police station Kotri.

3. At trial, complainant ASI Manzoor Hussain Babar was examined at Exh.03; he produced memo of arrest and recovery at Exh.03/A, arrival entry at P.P. Site at Exh.03/B, FIR at exh.03/C, report of Examiner of the Fire Arms Forensic Division, Hyderabad at exh.03/D, departure entry at Exh.03/E. Mashir HC Abdul Latif

at Exh.04. Thereafter, learned ADPP for the State closed the side of prosecution through statement at Exh.05.

4. Statement of appellant/accused was recorded under section 342, Cr.P.C at Ex.06, wherein he claimed his innocence, however, he did not examine himself on oath as required under section 340(2) Cr.P.C, nor any evidence in his defence was adduced to disprove the charge.

5. After hearing the parties' counsel, learned trial court came to the conclusion that the case has been proved against the appellant/accused; he convicted and sentenced him as stated above.

6. The main contention of the appellant is that the case against him is false and has been registered due to enmity; that the prosecution witnesses are police official and subordinate to complainant, therefore their evidence is undependable; that the incident has taken place in the populated area but despite of that fact no independent witness has been cited by the complainant; that there are material contradiction in between the prosecution witnesses, but the learned trial court did not consider the same and passed 'botch-up judgment', whereby he as innocent has been convicted, therefore he prayed for his acquittal.

7. Conversely, learned A.P.G argued that the prosecution evidence is trustworthy and contradictions in the evidence of

prosecution witnesses are minor in nature and the accused is specifically nominated in the commission of offence, therefore he is not liable to any grace or relief in it.

8. I have carefully considered the arguments as advanced by the learned counsel for the parties and carefully scanned the material so available before me. Admittedly, the prosecution has examined only complainant ASI Manzoor Hussain Babar and HC Abdul Latif Ali, who is mashir of arrest, recovery and place of incident and is subordinate to complainant ASI Manzoor Hussain Babar. It is pertinent to mention here that in this case ASI Manzoor Hussain Babar is the complainant and I.O of the case, therefore his evidence under these circumstances cannot be safely relied upon. Further, it is an admitted fact that incident took place in a populated area in the daylight time, but no plausible explanation is on record for the services of the private person as witness the event. The whole episode as stated in the FIR has been denied by the appellant, therefore under these circumstances the story as narrated in absence of the private witnesses appears to doubtful.

09. During course of arguments I have specifically asked the question from A.P.G that the incident took place in thickly populated area in the daylight time, but why the complainant did not obtain the services of the private person, no answer available

with him, therefore serious doubt has been created in the case of the prosecution. I have gone through the case of Tarique Pervaiz vs. the State as reported in 1995 SCMR page-1345 wherein it has been held as under:-

(b) Prohibition (Enforcement of Hadd) Order (4 of 1979)---

---Art.4---Benefit of doubt, grant of---For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts---If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.

10. Similar view has also been taken in the case of Muhammad

Akram vs. the State reported in 2009 SCMR 230 which reads as

under:-

(c) Criminal trial---

---Benefit of doubt---Principles---For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.

11. I have also gone through the evidence adduced by the complainant party and found that the same is also contradictory on material particulars, therefore the same also cannot be safely relied upon for maintaining order of the trial court.

12. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant and the learned trial court did not appreciate the evidence properly. Consequently the appeal is allowed, impugned judgment is set-aside and the appellant is acquitted from the charge. He is produced in custody, remanded back with direction to Superintendent Central Prison Hyderabad to release him forthwith, if he is not required in any other case.

JUDGE.