

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-157 of 2017.

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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Appellant: Through Nasrullah A. Khaskheli, Advocate.

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

Date of hearing: 10 .08.2017.

Date of decision: 10.08.2017

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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 08.06.2017, passed by learned Additional Sessions Judge-IV, Dadu, in Sessions Case No.507 of 2016, Re: State vs. Tufail Shah, U/s 24 of Sindh Arms Act in Crime No.39 of 2016, P.S Sita Road, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant R.I. for five years and to pay fine of Rs.20,000/=; in default of the same he shall suffer S.I for two months more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. It may be mentioned here that today the case is fixed for hearing of M.A.No.4424 of 2017 under section 426 Cr.P.C, but parties advocate are ready to argue the main appeal, therefore they have been heard.

3. Concise facts of the case as per FIR lodged by complainant ASI Qamaruddin Solangi at PS Sita Road on 09.9.2016, wherein he has alleged that accused Tufail Shah was arrested in crime No.38 of 2016 registered under Section 506/2, 337-A(i), F(i), 147,148, 149 PPC. During interrogation accused admitted

the guilt and was ready to produce crime weapon. Thereafter, complainant alongwith his staff and apprehended accused left PS vide entry No.25 at 1730 hours and proceeded towards pointed place, when reached at Dara Shah graveyard, the accused alighted from police mobile and led the police party towards graveyard and from KHABAR tree accused produced pistol alongwith magazine loaded with two live bullets and disclosed that the pistol is unlicensed one and was used in the main case. Such mashirnama was prepared in presence of mashirs PC Jameel Ahmed and PC Zameer Ahmed, hence this case.

4. At trial, PW-1/ complainant ASI Qamaruddin was examined as Exh.4, who produced entry No.25, memo of recovery, FIR, and chemical examiner report at Exh.4/A to 4/D respectively. PW-2 PC Jameel Ahmed at Exh.05. These witnesses have been cross examined by the Counsel for appellant/accused. Thereafter the prosecution side was closed vide statement at Exh.6.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.07, wherein he denied the allegations leveled by the prosecution and professed innocence. However, appellant/accused reluctant to examine himself on oath as postulated under section 340(2) Cr.P.C. and led no evidence in his defence.

6. 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.

7. It is stated by the learned counsel for appellant that he is innocent and has been falsely implicated by the police with malafide intention and ulterior motives. He further submitted that there are material contradictions and glaring discrepancies in the depositions of the prosecution witnesses. He also submitted that the allegation of using unlicensed pistol in crime No.38/2016 of P.S Sita Road is false, managed and concocted one and is result of strengthen the main case. He further submitted that the alleged recovered property has been foisted upon the

accused by the police due to non-payment of illegal gratification. He further submitted that all the PWs are police officials, interested, set up, inimical and hostile towards the accused. He further submitted that the case of the prosecution is full of doubts and it is settled law that if any single doubt arises and such benefit must be extended in favour of the accused and prayed for acquittal of the accused.

8. On the other hand learned D.P.G for the state contended that the prosecution examined two witnesses who have fully supported the prosecution case. He submitted that the police witnesses are good as private person and their evidence cannot be discarded on the point that they are police officials. There is no contradiction in the evidence of examined witnesses and both witnesses have fully supported the versions of prosecution and the learned trial judge has rightly convicted the appellant; he therefore supported the impugned judgment.

9. I have heard the learned counsel for the parties at length and have perused the documents and evidence on record. It is an admitted fact that this appellant has been arrested in main case under Crime No.38 of 2016, for offence under Section 506/2, 337-A(i), F(i), 147, 148, 149 PPC and this case is offshoot of the main case, whereas in main case the appellant / accused has been acquitted on the basis of evidence and same mashirnama of arrest and recovery by the trial Court on 03.06.2017. This fact has not been controverted by learned D.P.G. Further, it has been brought in evidence that appellant had allegedly admitted before complainant to produce the crime weapon and led the complainant to the place where he hidden the crime weapon, but despite of this fact the complainant did not bother to associate any independent person of the locality to witness the event. No effort has been made in this regard. It appears that whole case of the prosecution is based upon the evidence of two police officials who are subordinate to complainant, therefore, their evidence cannot be safely relied upon for the maintaining the conviction.

10. In addition to this, it may be observed that PW-1/ complainant ASI Qamaruddin is himself the complainant and has also acted as an Investigating Officer. Legally he could not assume this dual function and it was incumbent upon him to have entrusted the investigation of the case to another disinterested police officer. The fact by itself, has rendered the very trial of the case a sheer mockery. Additionally, it may be pointed out that if such a procedure / practice is allowed to continue, it would give license to the police to involve innocent people in false / fake cases according to their whims. This trend in my opinion is extremely dangerous and is accordingly deprecated.

11. In case of Nazeer Ahmed vs. the State reported in PLD 2009 (Karachi) 191, it has been held as under:-

“(e) Criminal Procedure Code (V of 1898)---

**---S. 154---Registration of case and investigation---
Principles---Officer, who is himself complainant in the case cannot be expected to collect and preserve evidence, which goes against his case---Such investigating officer cannot properly perform duties of an independent and fair investigating officer.”**

12. In this respect I am also, to a great extent, supported by the following case law:-

**(1) 1996 P.Cr.L.J 440
Muhammad Altaf v. The State.**

“ Art. 4. Appreciation of evidence. Complainant police official also acting as Investigating Officer. Although the evidence of a complainant police official who also becomes the Investigating Officer is admissible in evidence yet for safe administration of justice for sustaining the conviction of an accused such evidence should be corroborated by independent evidence.”

13. In this case ASI Qamaruddin is the complainant and investigating officer of the case, therefore, in view of the above authorities/cases, his investigation cannot be safely relied upon for conviction of appellant.

14. I have also gone through the case of **Tariq Perves v. The State** reported as **1995 SCMR 1345**, wherein it has been held that if a single circumstance creates reasonable doubt in the prudent mind about the guilt of the accused then he will be entitled to such benefit not as a matter of grace, but as a matter of right. Similar view has also been taken in the case of **Muhammad Akram v. The State** reported as **2009 SCMR 230**.

15. I have examined the evidence so brought on record by the complainant and prosecution witnesses, which is not necessary to reiterate here for the sake of brevity, but their evidence is contradictory on material particulars, hence cannot be safely relied upon.

16. 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. It is settled position of law that if there is slight apprehension regarding prosecution case being untrue, its benefit extends to the accused, resultantly appeal is allowed. The impugned order is set-aside and the appellant is acquitted from the charge. He is in jail, be released forthwith, if not required in any other case. This appeal was allowed in open Court after hearing the parties in the early part of the day and these are the reasons of short order announced in open Court.

JUDGE.

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-71 of 2017.

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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Appellant: Through Muhammad Akram, Advocate.

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

Date of hearing: 22 .05.2017.

Date of decision: 22.05.2017

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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 15.03.2017 passed by learned Additional Sessions Judge-I, Tando Adam, in Sessions Case No.251 of 2014, Re: State vs. Muhammad Jan, U/s 23-(1)(a) of Sindh Arms Act in Crime No.39 of 2014, P.S B-Section Tando Adam, whereby the learned trial court after full-dress trial convicted and sentenced the appellant R.I. for five years and to pay fine of Rs.50,000/=; in default of the same he shall suffer S.I for six months more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. It may be mentioned here that today the case is fixed for hearing of M.A.No.2445 of 2017 under section 426 Cr.P.C, but parties advocate are ready to argue the main appeal, therefore they have been heard.

3. Brief facts of the prosecution case as stated in FIR are that the appellant at the time of arrest under Crime No.38 of 2014, for offence under Section 324, 353, 412, 427, 34 PPC of P.S. B-Section Tando Adam, was found in possession of 30 bore pistol loaded with three live bullets for which he had no license to keep the same. Such mashirnama was prepared in presence of mashirs PC Abdul Wahid and PC Noor Nabi.

4. At trial, Mashir PC Abdul Wahid was examined as PW-1 (Exh.4); he has produced memo of recovery and arrest at Exh.4/A. Investigating Officer ASIP Muhammad Sharif examined as PW-2 (Exh.-5); he has produced memo of place of incident and Forensic report of weapon at Exh.5/A and B, respectively. Complainant SIP Muhammad Amin Junejo was examined as PW-3 (Exh.6); he has produced the FIR at exh.6/A. Thereafter the prosecution side was closed vide statement at Exh.7.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.08, wherein he denied the allegations leveled against him.

6. 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.

7. It is stated by the learned counsel for applicant that the case against appellant is false and has been registered due to enmity;

that appellant was arrested from the thickly populated area, but infact no independent witness has been cited as a witness of the incident; that learned trial Court did not consider the fact on record that appellant/accused was arrested during encounter with the police in Crime No.38 of 2014 and above case is offshoot of the same, whereas in main case the appellant / accused was acquitted in same evidence and same mashirnama of arrest and recovery; that whole case of the prosecution is based upon contradictory evidence of the complainant and prosecution witnesses, therefore according to him this appeal may be allowed and the appellant may be acquitted from the charge.

8. Learned A.P.G supported the impugned judgment by arguing that the impugned judgment passed after perusing the documents and evidence as available on record.

9. I have heard the parties at length and have perused the documents and evidence on record. It is an admitted fact that this appellant has been arrested in main case under Crime No.38 of 2014, for offence under Section 324, 353, 412, 427, 34 PPC and above case is offshoot of the same, whereas in main case the appellant / accused has been acquitted on the basis of same evidence and same mashirnama of arrest and recovery by the trial Court dated 23.2.2017. Further, it has been brought in evidence

that incident took place in thickly populated area, but infact no independent witness has been cited as a witness of the incident, therefore, false implication of appellant in this case cannot be ruled out. It appears that during the alleged police encounter, nobody from either side has received bullet injury, even police mobile also did not hit any bullet or scratch, hence this aspect of the case creates doubt in the prosecution case. I have examined the evidence so brought on record by the complainant and prosecution witnesses, which is not necessary to reiterate here for the sake of brevity, but their evidence is contradictory on material particulars.

10. 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. It is settled position of law that if there is slight apprehension regarding prosecution case being untrue, its benefit extends to the accused, resultantly appeal is allowed. The impugned order is set-aside and the appellant is acquitted from the charge. He is in jail, be released forthwith, if not required in any other case.

JUDGE.

