

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-81of 2016.

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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| Appellant: | In person. |
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| The State | Through Syed Meeral Shah, DPG |
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Date of hearing: 14 .09.2017.

Date of decision: 14 .09.2017

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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 18.05.2016, passed by learned IInd Additional Sessions Judge, Sanghar in Sessions Case No.286 of 2014, Re: State vs. Samano, U/s 23(1)(a) of Sindh Arms Act, 2013 in Crime No.51 of 2014, P.S Jhol, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant R.I. for two years and to pay fine of Rs.10,000/=; in default of the same he shall suffer S.I for 15 days more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. Concise facts of the case are that on 15.06.2014 at 2000 hours, at village Chuttal Mangrio Bus stop, Sinjhor-Jhol road, present accused waws arrested in main case FIR No.49/2014 under sections 324, 353, 427 PPC, in Crime No.41/2014 under sections 395, 458, 342, 337-A(i) PPC and in Crime No.42/2014 U/S 395, 458, 337-A(i) PPC, by police party headed by SIP Ghazi Khan Rajar, SHO of P.S Jhol and one unlicensed TT pistol of 30 bore with magazine containing 03 live bullets of 30 bore was

recovered from his possession in presence of mashirs, for that FIR against him was registered.

3. A formal charge against present accused u/s 23(1)(a) of Sindh Act, 2013 was framed at Exh.2, to which he pleaded not guilty and claimed to be tried, vide his plea at Exh.3.

4. At trial, prosecution examined PW-1 PC Mushtaque Ali at Exh.04, who produced copy of memo of arrest and recovery at Exh.4/A, carbon copy of memo of place of incident at Exh.4/B, PW-2/ complainant SIP Ghazi Khan at Exh.06, who produced attested copy of entry No.10 at Exh.06/A, copy of FIR at Exh.06/B, PW-3 Kirshan Lal IO of the case examined at Exh.07 who produced FSL report at Exh.07/A. Thereafter, the side of prosecution was closed vide statement Exh.8.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.09, wherein he denied the allegation leveled by the prosecution and claimed himself to be innocent. He has neither opted to examine himself on oath nor lead any compurgator. He has only prayed for justice and his acquittal.

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.42/2014 of P.S Sinjhoru is false, managed and concocted one and is result of strengthen the main case, however, in main case the accused have already been acquitted from the charge, hence, the instant case is doubtful. He further submitted that the alleged recovered property has been foisted upon the accused by the police and 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 three 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.

09. 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.49/2014 under sections 324, 353, 427 PPC, in Crime No.41/2014 under sections 395, 458, 342, 337-A(i) PPC and in Crime No.42/2014 U/S 395, 458, 337-A(i) PPC, wherein the

appellant / accused has been acquitted by trial Court. A part from this, it is alleged against the appellant that one unlicensed TT pistol of 30 bore with live bullets was recovered from him. It has been brought in evidence that on the relevant date, time and place the police party saw that 7 accused persons were standing there duly armed with lethal weapons and on seeing them they started firing and police (BEING ARMED WITH HEAVY MACHINERY SUCH AS SMG GUNS), on their self-defense also fired upon them and after a considerable time, police apprehended three accused persons while four made their escape good, this event seems shaggy story like always fabricated by police party in such type most of familiar FIRs, though because of above hazardous firing none from either side received a single injury or scratch hit to any vehicle plying on the road at the place of occurrence viz. bus stop Chuttal Mangrio or to police mobile, therefore, the same severely cuts at the root of prosecution and makes whole episode doubtful. Moreover, the incident took place in thickly populated area and the police party did not associate any private person to act as mashir or witness the event, such lapse on the part of prosecution had also cut at the roots of its case rendering the entire episode doubtful and it, by itself, was enough to make the prosecution version unbelievable, as such weapon allegedly recovered from the accused was sent to the ballistic expert on 14.7.2014, however, the incident took place on 15.6.2014, after the delay of about 29 days, for which no satisfactory explanation has been furnished, therefore tempering with such weapon cannot be ruled out. It further appears that at the trial nothing was produced on record by the prosecution to show that the alleged weapon so recovered was in working

condition and or functional and at the most alleged weapon is required to be treated no more than the piece of iron in absence of any proof about its being functional or working.

10. I have gone through the evidence of complainant as well as other star witnesses of the even, but their evidence has been found contradictory on material particulars. Besides this as I have observed above that the place of arrest and recovery is highly doubtful, therefore, the evidence of these witnesses cannot be safely relied upon.

11. I have gone through the case of **Tariq Pervaiz 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.**

12. I have also perused the evidence and documents on record and has also considered the version of both the parties put forward by them through evidence and found that the version of the appellants seems more plausible and convincing, while the version of the prosecution is totally doubtful.

13. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant and learned trial court did not appreciate the evidence and documents on record properly. Consequently, the instant appeal is allowed. The impugned judgment passed by the trail Court is set-

aside. Resultantly, the appellant is acquitted from the charge. He is present on bail, his bail bond stands cancelled and surety discharged.

JUDGE.

Ahmed/Pa