

Judgment sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-28 of 2004.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Appellant:	Through Imran Ahmed Abbasi, Advocate.
The State	Through Mr. Iram Ahmed, D.D.P.P for the State.
Date of hearing:	16 .08.2017.
Date of decision:	16.08.2017

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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 03.2.2017 passed by 2nd Additional Sessions Judge, Shaheed Benazirabad, in Sessions Case No.15 of 2016 (Re: State vs. Zahid Burdi), U/s 23-A of Sindh Arms Act, 2013, in Crime No.50 of 2015, P.S Pubjo, whereby the learned trial court convicted and sentenced the appellant as stated in the findings on point No.2 of the impugned judgment which reads as under:-

“In view of my findings on point No.1, the accused Zahid Burdi is hereby convicted U/S 265-H(ii) Cr.P.C for offence U/S 23-A Sindh Arms Ordinance, for one year with rigor imprisonment. He is present on bail, his bail bond cancelled and discharged, whereas accused remanded in District Jail, Shaheed Benazir Abad to serve conviction awarded to him. ”

2. The brief facts of the prosecution case are that complainant ASI Qurban Ali lodged FIR on 25.12.2015, alleging therein that on same date, he along with his subordinate staff vide entry No.10 at 1830 hours left P.P for patrolling in private vehicle.

During patrolling at different places, received spy information that one person stood at Pir Shahmir link road Drigh Mori waiting for guest, on receiving such information police party proceeded to the pointed place, reached there and saw on the head light of vehicle that one person stood there. Police alighted from vehicle and apprehended the accused person. ASI Qurban Ali Rajper inquired about the name and parentage, he disclosed his name as Zahid Ali Burdi son of Muhammad Alam by caste Burdi resident of village Ali Behar Burdi Taluka Kazi Ahmed. ASI Qurban Ali Rajpar recovered one 30 bore pistol along with magazine and 5 live bullets. ASI inquired about license he failed to produce valid license. Property sealed at spot and ASI Qurban Ali Rajper appointed mashir PC Khamiso Khan and co-mashir PC Asif Ali. Accused person further stated that he was waiting for his friend Amiro Dahri. ASI prepared mashirnama of recovery and arrest. Then brought the accused and case property at P.S Publijo, and lodged the FIR against the accused.

3. A formal charge against present accused u/s 23-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 ASI Qurban Ali as Exh.4, he produced mashirnama of arrest and recovery as Exh.4/A, copy of FIR as Exh.4/B, roznamcha entries as Exh.4/C, 4/D and 4/E, he also produced FSL report as Exh.4/F. Examined PW-2 Mashir PC Khamiso Khan as Exh.5.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.7, wherein he denied the allegations leveled by the prosecution and claimed himself to be innocent.

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; that the appellant was arrested on the basis of spy information from Pir Shahmir link road Drigh Mori, but complainant did not bother to associate any independent person of the locality to witness the event; that the learned trial court did not consider the point that the alleged pistol was recovered on 25.12.2015, but same was received for FSL report on 04.01.2016 though the same was examined at Hyderabad by Incharge Forensic Science Laboratory Forensic Division Hyderabad and there is no explanation of such delay of nine-days in receiving parcel of alleged pistol by FSL Hyderabad, this aspect of the case creates heavy doubt in the case of prosecution but same was not considered and passed impugned judgment in hasty manner and without applying judicial mind; that learned trial court has only believed upon the examination in chief of the PWs and did not bother to keep the cross examination of witnesses and their examination in chief in juxta position and wrongly held that there is no contradiction in the evidence of complainant and mashir; that in this matter ASI Qurban Ali Rajpur is the complainant and also

investigated the matter, therefore, his investigation cannot be safely relied upon, therefore, he prays for allowing this appeal.

8. On the other hand learned D.D.P.P for the state supported the impugned judgment by arguing that the impugned judgment is perfect in law and has been passed after considering the evidence and documents 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 on 25.12.2015 complainant ASI Qurban Ali was on patrolling duty alongwith his subordinate staff namely PC Khasmiso Khan and PC Asif Sumbal and during patrolling he received spy information that the present appellant is available at Pir Shahmir link road Drigh Mori waiting for his guests. On such information, police party reached at the pointed place and arrested the present appellant and recovered one 30 bore pistol alongwith magazine and five live bullets from his possession in presence of mashirs namely PC Asif Sumbal and Khamiso Khan. It is pertinent to mention here that mashirs of recovery in this case are police officials and also subordinate to the complainant. Admittedly the police party conducted said raid on spy information and despite having prior information no effort was made for associating private person to act as mashir and attest the very occurrence, arrest and recovery, thus recovery of weapons is clear violation of section 103 Cr.P.C. The whole case of the prosecution depends upon the evidence of the complainant ASI Qurban Ali and PC Khamiso Khan. I have perused the evidence of these two witnesses with the assistance of learned DDPP, but finds contradictory on material particulars of the case. It

is an admitted fact that the present appellant has been arrested on 25.12.2015 and allegedly one TT pistol with live bullets were recovered from the accused, but the weapon and bullets were sent to ballistic expert for forensic report on 04.01.2016, after the delay of nine days, for which no explanation has been furnished, therefore, false implication of the appellant in this case cannot be ruled out and non-sending the crime weapon to the ballistic expert for forensic report in time, is fatal to the prosecution case.

10. In addition to this, it may be observed that PW ASI Qurban Ali, who is the author of FIR as well as had conducted the investigation of instant case. 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. 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**.

14. 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 appellant seems more plausible and convincing, while the version of the prosecution is totally doubtful.

15. 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 trial

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

JUDGE.

Ahmed/Pa