

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-106 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Appellant: Through Mr. Ghulamullah Chang, Advocate.

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

Date of hearing: 05.10.2017

Date of decision: 05.10.2017

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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 28.05.2016, passed by learned Vith Additional Sessions Judge, Hyderabad, in Sessions Case No.861 of 2015, Re: State vs. Sattar, U/s 23-A(i) of Sindh Arms Act in Crime No.136 of 2015, P.S Husri Hyderabad, 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.50,000/=; in default of the same he shall suffer R.I for three months more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. Succinctly the facts of prosecution case are that the complainant ASI Allah Bux Panhwar lodged FIR on behalf of State alleging therein that arrested accused namely Sattar s/o Sohbat Chang in Crime No.135 of 2015, U/S 324, 353 PPC of P.S Husri was found in possession of

one unlicensed TT pistol of 30-Bore alongwith magazine and two live bullets, hence, present FIR was registered.

3. A formal charge against present accused u/s 23-A of Sindh Arms 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 Wazir Ali at Exh.04, he produced memo of arrest and recovery at Exh.4/A. PW-2 complainant ASI Allah Bux was examined at Exh.06, he produced arrival and departure entry, FIR, entry No.28, letter for permission, criminal record of accused, letter issued to MLO and FSL report at Exh.6/A to 6/H and then learned D.D.P.P. for the State closed the side of prosecution vide statement Exh.07.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.08. However, the accused has neither examined himself on oath nor led any evidence in 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. 135 of 2015, U/S 324, 353 PPC of P.S Husri 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 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 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.

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. 135 of 2015, U/S 324, 353 PPC of P.S Husri and this case is offshoot of the main case, whereas in main case the appellant / accused has been acquitted by this Court and detail reasons has also been given in the said judgment. 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 incident took place in thickly populated area, but despite of this fact, the complainant did not associate any private person to act as mashir of arrest and recovery which is clear violation of section 103 Cr.P.C, hence, such lapse on the part of prosecution had cut at the roots of its case rendering the entire episode doubtful and it, by itself, was enough to make the prosecution version unbelievable, Also, it is an admitted position that this incident took place on 24.7.2015 and recovered pistol was sent to the Ballistic Expert for opinion which was received on 31.7.2015, after the delay of seven days, for which no explanation has been furnished, therefore tempering with the same weapon and false implication of the appellant in this case cannot be ruled out and non-sending the recovery property to the ballistic expert for forensic report in time, is fatal to the prosecution case.

10. I have gone through the evidence of PW/mashir ASI Wazir Ali and complainant ASI Allah Bux, 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 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.**

12. In addition to this, it is observed that PW complainant ASI Allah Bux is himself the complainant and has also acted as an Investigating Officer in this 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.

13. 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.”**

14. 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.”

15. Here in this case whole case of prosecution is based on two police officials and there is no corroboration is on record by independent witnesses.

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 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 Sattar was granted bail under Section 426 Cr.P.C by this Court vide order dated 11.04.2017, but record reflects that he could not furnish surety, hence he is in jail, therefore, he be released forthwith, if not required in any other custody case/crime.

JUDGE