

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Appeal No. 422 of 2018.

Naik Muhammad son of
Liaquat Ali Waggan. Appellant.

Versus

The State. Respondent.

Mr. Muhammad Dawood Narejo, Advocate for appellant.
Mr. Mr. Saheer Abbasi, APG

Date of hearing: 03.09.2018.

Date of Judgment: 03.09.2018.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J- The appellant through the instant criminal appeal assailed the judgment dated 07-08-2018, passed by the learned Sessions Judge, Malir, Karachi in Sessions Case No. 122/2018 under Section 23 (1)(a) of Sindh Arms Act, 2013, whereby the appellant was convicted and sentenced to undergo R.I. for 03 years and fine of Rs.10,000/- and in case of default, he has to undergo S.I for one months in addition to the aforesaid sentence.

2. On 24-01-2017 at 22:15 hours, Complainant/SIP Ghulam Haider Panhwar lodged F.I.R. No. 48/2017 at PS Shah Latif Town of the instant case. According to prosecution case, accused Naik Muhammad arrested in F.I.R. No. 47/2017, u/s 392, 34 PPC of the same police station on the spot by patrolling police party headed by the Complainant and at the time of arrest of accused, a carbine pistol with the 2 live cartridges was recovered. As such, after registering the main case against the accused Naik Muhammad

and his associate Amanullah Lashari, the instant case was registered against him.

3. The prosecution produced two witnesses; both of them are police officials i.e. Complainant SIP Ghulam Haider (PW-1), PC Ghulam Hussain (PW-2) as marginal witness of memo of arrest and recovery. ASI Tarique Mehmood, was examined as Investigating Officer but the person, who with the help of public arrested appellant and recovered pistol was not examined. The said important witness could not be produced by the prosecution. Nevertheless, after recording the prosecution witnesses, the learned trial Court provided an opportunity to the appellant to explain the evidence against him by recording his statement u/s 342 CrPC. Although, the appellant denied all the allegations levelled against him but after evaluating the evidence, the trial Court came to the conclusion of conviction and pronounced impugned judgment.

4. I have heard the arguments advanced by the learned counsel for the appellant and the learned prosecutor. The learned counsel for the appellant contends that the appellant is a minor and he is hardly 18 years of age. According to him, the star private witness was not examined, while there are contradictions between the prosecution witnesses. He points out that the appellant has been acquitted in F.I.R. No. 47/2017 and when the main case is not established, how the present case can stand on the footing of same evidence. He submits that he is permanent resident of Jacobabad and never involved in such type of activities. According to him, he came to Karachi for a visit but God knows better, how he was involved in this case. The father of appellant namely Mr. Liaquat Ali Waggan is also present in Court and he submits that his son might have fallen in the hands of some culprits/criminals but he never involved in any criminal activities at his hometown. He

undertakes that if some lenient view is taken regarding his son, he would make sure that he may not involve in any misdemeanor in future.

5. After hearing the arguments and going through the record, I am of the opinion that the prosecution has established the case against the appellant. The contradictions pointed out by the learned counsel for the appellant are minor and cannot provide and foundation for setting aside the impugned judgment. However, considering the young age of the appellant, I am of the view that the sentencing is not a good option for the appellant besides quantum of sentence is also appears to be excessive for a first offender. I, therefore, modify the sentence and direct that the appellant has to undergo a sentence of R.I. two years instead of 03 years if he is sent to serve his sentence. The amount of fine and sentence in case of default will remain to be the same and has to be paid or served out, if he is remanded to jail at any time after passing this order.

6. However, another aspect of the case is to be considered, which pertains to rehabilitative and restorative justice. It is argued by the counsel for appellant and verified by the father of appellant that he is of hardly 18 years of age and the learned Prosecutor did not controverted his age. Nothing on the record is available to establish that the appellant is minor but considering the words of his father, it appears that the appellant is a blooming young man. Being a young man and novice, it will be more appropriate that he may be encouraged to refrain from criminal activities and to improve his ways and to become a useful citizen of the society. In my humble view, there are good chances of reformation and rehabilitation for the appellant, if an opportunity of reformation and rehabilitation is provided to him.

7. The Probation of Offenders Ordinance, 1960 (hereinafter referred as 'the said Ordinance') is a reformatory measure, and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt, but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease and the very purpose of punishment stands in the danger of being frustrated. In recalcitrant cases, punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But for a blooming young man, since there is a chance of improvement available, to the appellant, who strays into the path of crime due to any reason. Crimes are not always rooted in criminal tendencies, and their origin may lie in psychological factors induced by hunger, want and poverty. The said Ordinance recognizes the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, may think that he has no more to lose or fear, which resultantly may breed a litter of crime. The object of the said Ordinance is to nip that attitude in the bud.

8. The probation system in our country is usually considered as a boon for some of the selected offenders, but it is more than this limited scope. It is a system which provides a means of rehabilitation without the necessity of breaking up the offender's normal life and removing him from the natural surroundings of his home. It may be used as a tool to raise the status of a convicted offender by making him a useful member of the society. The

institution of probation may also be used for recompensing the society if it is integrated with community services for the benefit of the community.

9. I am of the view that the scheme of community service will be more beneficial for if incorporated with the probation order. I, therefore, while maintaining the sentence of imprisonment of two years (as revised above), giving the appellant under the supervision of the Probation Officer for two years upon executing the requisite bonds for Rs. 50,000/- up to the entire satisfaction of trial Court. The bond shall contain a condition that during the period of probation, the appellant/ probationer shall restrain from any immoral, illegal activities and felonies and shall also improve his behavior. There shall also be a condition of the probation and the bond that the appellant shall render some community service. The appellant is directed to plant 20 saplings of trees of domestic origin like Neem, Jamun, sheesham, mangoes, berry, pakar, peepal etc. at some suitable place of his choice within his native district. It will be the responsibility of the appellant to take care of all those saplings until they become strong enough to survive themselves. The plantation should be done within 3 months after his releasing from jail on probation. He has to get a certificate of planting and taking care of saplings quarterly from the chairman of union council and move jurisdiction these saplings were planted and such report/certificate be submitted before the Probation Officer. Since the appellant is permanent resident of Jacobabad; therefore, the Probation Officer working within District Malir, Karachi is directed that after taking custody of the appellant, he would be allowed to remain within District Jacobabad and he shall look after and take care of the appellant as probationer through Probation Officer, Jacobabad. It is directed that after getting the appellant released, the Probation Officer

Malir will direct the appellant to contact the Probation Officer, Jacobabad to appear before him time to time and to provide complete details to the Probation Officer, Jacobabad. The Probation Officer, Malir is further directed to intimate the Probation Officer, Jacobabad regarding this order. The Probation Officer, Jacobabad is also directed to watch the appellant/probationer diligently and in case he needs any assistance to discharge the function, he may approach the District and Sessions Judge, Jacobabad for the same and the District and Sessions Judge is directed to cooperate with the probation officer for implementation of this probation order.

10. The Probation Officer, Jacobabad shall assure that the appellant is performing the community service in letter and spirit. In the case of violation of any terms and condition of the bond including the term of community service, the Probation Officer may submit a report before the trial Court through Probation Officer, Malir as well as through District and Sessions Judge, Jacobabad. The trial Court is authorized to pass an appropriate order on such report either by imposing a fresh condition or extending the period of probation or even cancellation of the probation order. In the case of cancellation or annulment of the probation order, the appellant will be sent back to jail to pass the remaining period of his sentence.

11. The instant appeal is disposed of in the above terms. The office is directed to send a copy of this order to trial Court, District and Sessions Judge, Jacobabad and Probation Officers Malir and Jacobabad.

JUDGE