

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Jail Appeal No.S-282 of 2017

Date of hearing: 24.05.2019.
Date of judgment: 24.05.2019.
Appellant: Liaquat Ali through Mr. Wazeer Hussain Khoso, advocate.
Respondent: The State through Mr. Shahzado Saleem Nahiyoan, D.P.G. Sindh.

J U D G M E N T

Fahim Ahmed Siddiqui, J- The appellant, through the instant Criminal Jail Appeal has assailed the conviction judgment dated 09.11.2017, passed by 2nd Additional Sessions Judge, Badin, in Sessions Case No. 01 of 2015. The impugned judgment was pronounced after finding the appellant Liaquat Ali, guilty and convicted him for an offence under Section 25 of Sindh Arms, Act 2013 to undergo R.I for a term of ten (10) years. Record reflects that the instant case is offshoot of main case bearing Crime No.42 of 2014 of Police Station Khorwah under Section 302 PPC, in which the appellant was also convicted for life imprisonment. However, it was ordered that both the sentences shall run concurrently. The trial Court also extended the benefit of Section 382-B of Cr.P.C to the appellant.

2. The factual matrix of the case is that the appellant was arrested and confined in police lockup in Crime No.42 of 2014 at Police Station Khorwah. On 25.12.2014, Investigating Officer of the said crime interrogated the appellant, who disclosed that he has concealed the pistol used by him in the murder of deceased Akber / main crime in Devi Jungle at Manhi Mour and led the complainant alongwith his subordinate staff and on his pointation, the accused took out one black

shopper bag from Devi Jungle, which was opened and found containing 30 bore pistol alongwith five live bullets.

3. After usual investigation, the police submitted the final report before the concerned Judicial Magistrate, who took cognizance of the offence and subsequently, the case was entrusted to the learned trial Court, where the charge against the accused was framed, who pleaded not guilty and claimed trial.

4. In order to establish its case, the prosecution examined PW-1 Qadir Bukhsh (Exhibit-5), who produced the memo of recovery at (Exhibit-5/A) and P.W-2 Recovery Officer Inspector Qurban Ali (Exhibit-6), who produced the departure and arrival entries, F.I.R and report of Forensic Science Laboratory (Exhibits-6/A to 6/D). After closure of the side of the prosecution under the statement of DDA (Exhibit-7), the statement of the accused was recorded under Section 342 Cr.P.C (Exhibit-8). In his statement, the accused denied all the allegations leveled against him by the prosecution and claimed his innocence.

5. Learned counsel for the appellant contended that the case is managed; appellant is innocent and has been falsely implicated. He while arguing the case submitted that the alleged pistol has been foisted upon the appellant in order to strengthen the main case. He submitted that the learned trial Court has only believed upon the examination in Chief of the PWs and did not bother to consider the cross examination of witnesses while delivering the judgment and has miserably failed to properly evaluate the evidence. He contended that learned trial Court did not discuss the cross examination of the witnesses in its judgment and passed the same in hasty manner and the appellant ought to have been acquitted, hence, the findings recorded by the trial Court requires interference of this Court. Learned counsel prayed for the acquittal of the appellant from the charge.

6. Learned D.P.G. Sindh supported the impugned judgment by submitting that prosecution has proved its case beyond any reasonable doubts. According to him, recovery of weapon was effected from the appellant which was used in the commission of main crime, hence, he was rightly convicted by the trial Court.

7. After hearing the arguments at bar, I have gone through the material placed before me. In the instant case, certain important points have been noted by me.

8. Appraisal of record shows that PW-1 mashir Qadir Bukhsh had deposed that on 25.12.2014 the appellant being booked in main crime was interrogated by police and in his on disclosure He stated that police taken him and accused led them to devi jungle situated near Manhi Jat Mour on Gul Mir Shah road and recovered the pistol he along with his subordinate staff left PS towards the pointed place and picked-up PW-1 Qadir Bukhsh from Ahmed Rajo Bus Stop. According to evidence of Inspector Qurban Ali, who recovered the crime weapon while complainant Qurban Ali in his evidence deposed that he took accused from police lock up and after interrogation upon disclosure, he along with his subordinate staff so also appellant left police station in a private Datsun pickup and picked up mashirs from Ahmed Rajo Bus Stop and then went to the place of recovery i.e. devi jungle and recovered pistol. It has also come in the evidence that recovery of pistol was effected after six days of the arrest of appellant, hence, it is a question mark that as per prosecution the appellant volunteered to produce crime weapon then why it was recovered after six days of his arrest which too voluntarily. From the perusal of evidence of complainant, it appears that he did not disclose a single word as to how he contacted or picked up from Ahmed Rajo Bus Stop even PW Qadir Bux mashir also failed to point out as to how he was picked by police. In the evidence, complainant stated that the private Datsun was commercial and it was obtained voluntarily. In my opinion how it is possible that a commercial Datsun could be got voluntarily and from whom it was obtained, no reference of such owner / driver has come on record. The complainant failed to justify the picking up a private Dasun.

9. It is worth noting that according to the evidence of mashir Qadir Bux, he was present at police station on 25.12.2014 when the appellant volunteered to produce the crime weapon / pistol of the main offence while in contra, complainant Inspector Qurban Ali in his evidence stated that mashir was picked up from Ahmed Rajo Bus stop. Now,

question arises that whose narration is believed. Learned counsel has also pointed out that almost in 11 different memos the same Qadir Bux has been made as mashir. He has also pointed out the appellant has been acquitted in the main case.

10. In the circumstances, I am of the view that the prosecution case is not free from doubts and it is well settled principle of law that even a single circumstance creating a reason doubt, the benefit of which, always goes in favour of accused, however, in the instant case there are material discrepancies in prosecution evidence. In this regard, reliance can be placed upon case of '**Tariq Parvez v. The State**' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:

"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as matter of right".

11. In the light of what has been discussed above and case law I am of the considered view that the prosecution has failed to prove case against the appellant beyond any reasonable doubt, therefore, instant appeal is **allowed**, impugned judgment dated 09.11.2017 is set aside and the appellant is acquitted of the charge. The appellant shall be released forthwith if not required in any other custody case.

JUDGE

Fahad Memon
Hyderabad