IN THE HIGH COURT OF SINDH, KARACHI

Spl. Criminal Anti-Terrorism Appeal No. 64 of 2019

Before:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio JJ-

Appellant: Muhammad Yousaf through Mr. Muhammad Faisal Bukhari, advocate.

Respondent: The State through Mr. Abdullah Rajput, D.P.G.

Date of hearing: 27.08.2019

Date of decision: 27.08.2019

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- Through captioned Special Criminal Anti-Terrorism Appeal, the appellant has impugned the judgment dated 25.02.2019 passed by Anti-Terrorism Court-IV Karachi, pertaining from FIR No. 544 of 2018, registered with P.S Ferozabad u/s 23(i)(a), whereby the appellant was convicted and sentenced to imprisonment for 3 years with a fine of Rs. 5,000/-.

2. Brief facts of the above captioned appeal are that on 16.10.2018 at about 1:55 a.m. the appellant was apprehended from Fortune Center Service Road, Block 6 PECHS, along with a 30 bore pistol and a loaded magazine with 4 rounds for which he failed to produce a license. He was arrested and the F.I.R was lodged at the police station.

3. After formal investigation, the appellant was challaned. Thereafter, a formal charge was framed against the appellant by the trial Court to which he pleaded not guilty and claimed to be tried.

4. Prosecution, in order to substantiate its case against the appellant, examined in all 3 witnesses and exhibited multiple documents. Thereafter, vide statement, the prosecution side was closed.

5. The statement of appellant was recorded u/s 342 Cr.P.C wherein he denied all the allegation levelled against him and claimed to be falsely implicated in the present case. However, he neither examined himself on oath nor produced any evidence in his defence.

6. The learned trial Court after hearing the learned counsel for parties and assessment of evidence, by judgment dated 25.02.2019, convicted and sentenced the appellant as stated above. Hence, this appeal has been filed by the appellant.

7. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment passed by the trial Court, therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant argued that the appellant has been falsely implicated in the present case; that there is an unexplained delay of 1 hour and 45 minutes in the lodging of F.I.R; that all the witnesses are police officials and no independent witnesses were cited; that the appellant had filed a constitutional petition against a police officer after which he was implicated in numerous false cases; that the appellant has been acquitted in the main case based on the same set of evidence. He therefore prayed for the acquittal of the appellant.

9. Conversely, learned D.P.G while refuting the above contentions raised by the appellant's counsel argued that impugned judgment is in accordance with law and appropriate appreciation of evidence was undertaken by the trial Court; that the appellant has failed to point out any motive behind his false implication. He therefore prays for the dismissal of the appeal.

10. We have heard the learned counsel for the appellant, considered the contentions of learned D.P.G and have gone through the material available on record.

11. From the perusal of evidence, we have come to the conclusion that the prosecution has failed to prove its case against the appellant for multitudes of reasons. Firstly, there was an exchange of fires from either parties *i.e. the appellant and the police*, however to our surprise, neither of the sides were injured even to the slightest. Nor was the police mobile in which the officials were patrolling harmed in any manner. Moreover, it pertains from the depositions of the prosecution witnesses that no efforts whatsoever were made to associate any persons of the locality as mashirs of arrest and recovery. On the perusal of record, we have also noticed that the evidence brought on record by the prosecution is doubtful on material particulars. For example, P.W-1 ASI Muhammad Asghar deposed in his cross examination that he prepared memo of arrest and recovery on the bonnet of the vehicle on torch light. It is a matter of record that the incident took place after midnight and the said torch which provided light was also not produced in evidence before the trial Court. There are material illegalities in the whole process which make the prosecution case even more doubtful. The prosecution witnesses

have failed to provide an accurate description of the weapon recovered from the appellant and nowhere was it mentioned that it had a black handle. This makes a prudent mind question the fact whether the alleged recovered pistol is the same as the one present in court. This is further backed up by the fact that the officials failed to disclose in the memo of arrest and recovery that the pistol had, engraved on it, the words ***"MADE IN CHINA NORINCO, CALIBER 30 BORE".*** The engine and chassis number of the motorbike used in the crime has also not been mentioned in the statements of P.Ws. All the prosecution witnesses failed to mention in their 161 Cr.P.C statements as to how many shots they had fired. The P.Ws also failed to mention the time at which they had left the police station for patrolling nor did they mention the registration number of the official police mobile in which they had left for patrolling.

12. It is a matter of record that no evidence was brought before the trial Court with regard to the safe custody of the recovered pistol and empties and safe transmission of the same to the Forensic Science Laboratory. Moreover, the same was sent and received by the office of AIGP, Forensic Division on the day of 17th October while the incident occurred on the intervening night of 15th and 16th of October, thereby the same was delayed by almost two days. Such a delay has not been explained by the prosecution. Furthermore, the prosecution has failed to examine any witness so as to ascertain that the evidence was kept in safe custody before it was sent to the FSL nor have any names been disclosed.

13. Perusal of record also shows that the appellant was acquitted by the trial Court in the main case pertaining from F.I.R No. 543 of 2018 u/s 353, 324 and 34 PPC on the same set of evidence by which the appellant was convicted in F.I.R No. 544 of 2018 u/s 23 (i) (a) Sindh Arms Act. Therefore, the prosecution version had already been disbelieved by the trial Court.

14. The above aspects of the case cast serious doubt on the prosecution case. It is a well-settled principle of law that even if there raises the slightest of doubt regarding the guilt of an accused, the benefit shall go to the accused. Moreover, the prosecution is duty-bound to prove its case against the accused *'beyond reasonable doubt'*, however in the present case, the prosecution has failed to do so. In this respect, reliance can be placed on the case law reported as ***Mst. Asia Bibi v. The State and others (PLD 2019 SC 64)*** that:-

> *48.* ***It is a well settled principle of law that one who makes an assertion has to prove it. Thus, the onus rests on the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial. Presumption of innocence remains throughout the case until such time the prosecution on the evidence satisfies the Court beyond reasonable doubt that the accused is guilty of the offence alleged against him.*** *There cannot be a fair trial, which is itself the primary purpose of criminal jurisprudence, if the judges have not been able to clearly elucidate the rudimentary concept of standard of proof that prosecution must meet in order to obtain a conviction. Two concepts i.e., "proof beyond reasonable doubt" and "presumption of innocence" are so closely linked together that the same must be presented as one unit. If the presumption of innocence is a golden thread to criminal jurisprudence, then proof beyond reasonable doubt is silver, and these two*

> *threads are forever intertwined in the fabric of criminal justice system. As such, the expression "proof beyond reasonable doubt" is of fundamental importance to the criminal justice: it is one of the principles which seeks to ensure that no innocent person is convicted. Where there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of criminal justice. Further, suspicion howsoever grave or strong can never be a proper substitute for the standard of proof required in a criminal case, i.e. beyond reasonable doubt. In the presence of enmity between the accused and the complainant/witnesses, usually a strict standard of proof is applied for determining the innocence or guilt of the accused. If the PWs are found inimical towards the accused, she deserves acquittal on the principle of the benefit of the doubt. Keeping in mind the evidence produced by the prosecution against the alleged blasphemy committed by the appellant, the prosecution has categorically failed to prove its case beyond reasonable doubt. Reliance in this behalf may be made to the cases reported as Muhammad Ashraf v. The State (2016 SCMR 1617), Muhammad Jamshaid v. The State (2016 SCMR 1019), Muhammad Asghar alias Nannah v. The State (2010 SCMR 1706), Noor Muhammad alias Noora v. The State (1992 SCMR 2079) and Ayub Masih v. The State (PLD 2002 SC 1048).*
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> ***(emphasis supplied)***

15. It is also a well-settled principle of law that for an accused to be given benefit of doubt, it is not necessary that there should be many circumstances creating doubt. In this respect, reliance is placed on the case law reported as ***2018 SCMR 772 (Muhammad Mansha v. The State*** wherein it has been held that:-

> *4.* ***Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the***

> ***accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right.*** *It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).*
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> ***(emphasis supplied)***

16. For what has been discussed above, this Court is of the firm view that the prosecution has not been able to prove its case against the appellant beyond reasonable doubt, therefore we, while extending benefit of doubt to the appellant, acquitted him of the charge vide short order even dated.

These are the reasons for the same.

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