

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Criminal Jail Appeal No. S- 215 of 2018

Date of hearing & judgment: 02.03.2020.

Appellant produced in custody by the jail authorities. His  
counsel is called not in attendance.

Mr. Shewak Rathore, D.P.G. for the State.

**JUDGEMENT**

**ABDUL MAALIK GADDI, J-** Through this criminal jail appeal, the appellant Riaz Ahmed @ Kirsh has assailed the legality and propriety of judgment dated 17.08.2018 passed by learned 2<sup>nd</sup> Additional Sessions Judge, Badin in Sessions Case No.78/2018 (Re: The State V/s Riaz Ahmed alias Kirsh) arising out of Crime No.41/2018 registered U/S 23(1) (a) Sindh Arms Act, 2013 at P.S. Kario Ghanwar, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in Point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.2 of the impugned judgment which reads as under:-

**“In view of my findings on point No.1, I have come to the conclusion that the prosecution has proved the charge against the accused beyond any shadow of doubt. I have taken the lenient view and convict the accused Riaz Ahmed alias Kirsh son of Ahmed alias Chatoon Sheedi for the offence punishable under section 23(1)(a) of Sindh Arms Act 2013 and sentence him for period of seven (7) years. The benefit of section 382-B Cr.P.C is extended to accused. The accused is produced in custody and is remanded to Central Prison Hyderabad to serve out the sentence awarded to him as per law”.**

2. Facts of the case as disclosed in F.I.R are that on 06.06.2018 at 1400 at Amir Shah Sim Nali Mori on Dadharko Road Deh Tarari, District Badin, the present appellant was arrested by complainant ASI Allah Bukhsh Ghirano Incharge PP Tarai alongwith his subordinate staff of P.S Kario Ghanwar and recovered one double barrel gun in running condition and four live cartridges of red colour of Shaheen

company. Such mashirnama was prepared in presence of mashirs PC Khanghar Khan and PC Ali Ahmed Lashari.

3. Charge was framed against accused for the offences punishable under sections 23(1) (a) of Sindh Arms Act at Exh.3, to which he pleaded not guilty and claimed to be tried vide his plea at Exh.3-A.

4. At the trial, prosecuting examined complainant ASI Allah Bukhsh Ghirano at Exh.4, who produced the memo of arrest and recovery at Exh.4-A, FIR at Exh.4-B, entries of investigation in 7 leaves at Exhs.4-C to 4-I, report of Ballistic Expert at Exh.4-J and criminal record/list of criminal cases at Exh.4-K and P.W.2 PC Khanghar Khan at Exh.5. Thereafter the learned ADPP for the State closed the side of prosecution vide statement at Exh.6.

5. Statement of accused was recorded under section 342 Cr.P.C at Exh.6 wherein he denied the allegations of prosecution and claimed his innocence. He has stated that police foisted the weapon at the instance of complainant party of main case. However, the accused neither examined him on Oath nor lead defence evidence.

6. Appellant present in person contended that the case is managed one and he is innocent and has been falsely implicated in this case at the instance of complainant of main case; that the alleged gun has been foisted upon him; that no independent witness has been cited by complaint at the place of incident and the PWs being police officials are interested witnesses; that the learned court has passed the impugned judgment in a hasty manner and he ought to have been acquitted, hence, the findings recorded by the trial Court requires interference by this Court. He lastly prayed for his acquittal from the charge.

7. Learned D.P.G. opposed the appeal on the ground that during patrolling, complainant ASI Allah Bukhsh on spy information apprehended the present appellant and recovered one 12 bore double barrel gun alongwith five live cartridges. He further contended that the appellant is also involved in some other cases hence he is not entitled for any relief.

8. I have heard appellant in person, learned D.P.G for the State and perused the material available on record.

9. From the perusal of record, I have come to the conclusion that the prosecution has failed to prove its' case against the appellant for the reasons that this is the case of advance information about the availability of appellant and it was noon time, despite of this fact prosecution did not bother to associate any private person either from the place where they received information or from the place of incident to act as mashir of arrest and recovery though it was a thickly populated area and the people were available there. During the course of arguments I have specifically asked the question from learned D.P.G. that when the private persons were available at the place of information and also at the place of incident why their services were not obtained to witness the event. He submits that u/s 34 of Sindh Arms Act, 2013, it was not necessary to obtain the services of private person and he was of the view that evidence of police officials is as good as that of a private person. No doubt the evidence of police officials is as good as that of a private person and the evidence of police officials cannot be discarded simply because they belong to police force and the court should not start with any presumption against them. However, in a case of recovery of arms where the fate of an accused person hinges upon the testimony of police officials alone, it is essential to find out if there was any possibility of securing independent persons at the time of recovery. The conviction or acquittal of an accused person depends upon the credibility of the witnesses as assessed by the Court but where it was possible for the police officials to call independent witnesses to act as mashir but he deliberately avoided, the Court has to be very careful in weighing such evidence. It is settled principle of law that judicial approach has to be cautious in dealing such type of evidence.

10. In this case complainant and I.O is the same which also creates some doubt in a prudent mind. No doubt that no specific bar exists under the law against complainant who is also the investigation officer of the case, but being the complainant it cannot be expected that an investigation officer he will collect any material which goes against the prosecution or gives any benefit to the accused. Evidence of such officer therefore, is a weak piece of evidence and for sustaining a conviction it would require independent corroboration which is lacking in this case.

11. So far as the contention of learned D.P.G. that present appellant was / is also involved in number of criminal cases, therefore, he is not entitled for the relief claimed, I am not impressed with this argument for the reason that mere pendency of certain criminal cases against the accused does not disentitle him for the relief if otherwise he is entitled for.

12. It further appears from the record that alleged incident is said to have taken place on 06.06.2018 whereas the alleged recovered weapon was received by the Forensic Science Laboratory on 11.06.2018 after the delay of about Six (06) days for which no explanation has been furnished by the prosecution. Moreover, the alleged recovered gun and cartridges retained by whom during this intervening period has also not been explained by the prosecution that after its recovery under whose custody, the same were lying. For the sake of arguments, if it is assumed that the case property was lying in Malkhana then no report/entry of Malkhana has been produced to corroborate the version of prosecution. No official from Forensic Science Laboratory has been examined in this case. Even PC Achoo Khan through whom the case property was sent to the Forensic Science Laboratory, Hyderabad has not been examined before the trial court.

13. Admittedly, in this case, there are number of infirmities/lacunas, which have created serious doubt in the prosecution case. It is settled principle of law that for extending benefit of doubt, it is not necessary that there should be multiple circumstances creating doubt. If a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in the case of **Tariq Pervez v. The State [1995 SCMR 1345]** wherein it has been held by Honourable Supreme Court of Pakistan that:

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

14. For the above stated reasons, while respectfully relying upon the above cited case law, I have no hesitation to hold that prosecution has failed to prove its' case against the appellant beyond any shadow of reasonable doubt. Consequently, instant appeal is hereby allowed. Impugned judgment dated 17.08.2018 passed by learned 2<sup>nd</sup> Additional Sessions Judge, Badin in Sessions Case No.78 of 2018 (Re-State v. Riaz Ahmed alias Kirsh) arising out of Crime No.41 of 2018 u/s 23(1) (a) Sindh Arms Act, 2013 of P.S Kario Ghanwar is set aside and the appellant is acquitted of the charge. The appellant is in custody; he shall be released forthwith if he is not required in any other custody case.

**JUDGE**

Tufail