

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.D-119 of 2019

Before:

Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Irshad Ali Shah.

Appellant: None present.

The State: Through Mr. Shevak Rathor, D.P.G.

Date of hearing: 10-11-2020.

Date of decision: 10-11-2020.

J U D G M E N T

IRSHAD ALI SHAH-J; The facts in brief necessary for disposal of instant criminal appeal are that the police party of PS Jhalo District Dadu consisting of ASI Bashir Ahmed and others went at the place of incident to apprehend the appellant and others wanted in FIR crime No.52 of 2014 u/s 302 PPC of PS Jhalo. The appellant and others deterred the above said police party from performing their lawful duty as a public servant by making fires upon them with intention to commit their murder thereby PC Muhammad Moosa sustained fire shot injury. The appellant was apprehended at the spot by the above said police party along with unlicensed TT pistol of 30 bore, while rest of the culprits made their escape good.

2. At trial, the appellant and co-accused Hameer, Atta Muhammad, Kabil and Shamshad were tried jointly for committing murder of deceased Dildar, undertaking an encounter with the police party and recovery of unlicensed pistol. They did not plead guilty to the charge and prosecution to prove it, examined complainant ASI Bashir Ahmed and others and then closed the side.

3. At conclusion of trial vide judgment dated 14.06.2019, all the accused charged for the above said offence[s] were acquitted except the appellant, who was found guilty for the following offence[s] and was convicted and sentenced accordingly;

- i. For offence punishable u/s 7(1(h) of Anti-Terrorism Act, 1997 sentence him to suffer R.I for seven years and fine of Rs.10,000/-in case of failure in payment of fine accused shall suffer S.I for three months more.*
- ii. For offence punishable u/s 324 PPC sentence him to suffer R.I for seven years and fine of Rs.10,000/, in case of failure in payment of fine accused shall suffer S.I for three months more.*
- iii. For offence punishable u/s 353 PPC sentence him to suffer R.I for two years and fine of Rs.10,000/-in case of failure in payment of fine accused shall suffer S.I for three months more.*
- iv. For offence punishable u/s 23(1)(a) r/w S.24 Sindh Arms Act 2013 sentenced to suffer R.I for seven years and fine of Rs.10,000/-in case of failure in payment of fine accused shall suffer S.I for three months more.*

4. The appellant being aggrieved of above said judgment has impugned the same before this Court by preferring the instant criminal appeal from jail.

5. None has come forward on behalf of appellant to argue the instant appeal while learned D.P.G for the State by supporting the impugned judgment has sought for dismissal of instant Criminal Jail Appeal by contending that the appellant has been arrested at the spot after encounter and on arrest from him has been secured the pistol which he has used for causing fire shot injury to PW PC Muhammad Moosa.

6. We have considered the above argument and perused the record.

7. The complainant was having advance information about the availability of the appellant and others yet he has failed to associate with him any independent person to witness the possible arrest and recovery, such omission on his part could not be overlooked. The injury sustained by PC Muhammad Moosa is not attributed to the appellant specifically. It was night time incident. The pistol allegedly recovered from the appellant has been subjected to expert examination with delay of about eight days to its recovery; such delay having not been explained plausibly could not be overlooked. HC Ghulam Abbas who has taken the pistol to the expert has not been examined by the prosecution for no obvious reason. The appellant has been acquitted in connected murder case. Co-accused Hameer, Atta Muhammad, Kabil and Shamshad with utmost similar role on the basis of same evidence has already been acquitted by learned trial Court and such acquittal has not been impugned by the prosecution. In that situation, it would be hard to maintain the conviction against the appellant.

8. In case of **Sardar Bibi and others vs. Munir Ahmed and others (2017 SCMR-344)**, it was held by the Hon'ble Court that;

*“When the eye-witnesses produced by the prosecution were disbelieved to the extent of one accused person attributed effective role, then the said eye-witnesses could not be relied upon for the purpose of convicting another accused person attributed a similar role without availability of independent corroboration to the extent of such other accused”.*

9. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

10. In case of **Faheem Ahmed Farooqui vs. The State (2008 SCMR-1572)**, it is held that;

*“single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.*

11. For what has been discussed above, the conviction and sentence recorded against the appellant are set-aside. Consequently, the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court. The appellant shall be released forthwith in the present case if not required in any other custody case.

12. The instant appeal is allowed accordingly.

JUDGE

JUDGE

Ahmed/Pa,