

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No.S-76 of 2015

Appellant: Jaffer Son of Barkat Rahu, through Mr. Ali Ahmed Zaman Patoli, Advocate.

The State: Through Ms. Rameshan Oad, A.P.G.

Date of hearing: 21-12-2020.

Date of decision: 21-12-2020.

J U D G M E N T

IRSHAD ALI SHAH J.- It is alleged that after an encounter, the appellant was arrested and from him was secured unlicensed kalashnikov with magazine containing 19 live bullets by police party of P.S. Hala, for that he was booked and reported upon.

2. At trial, the appellant did not plead guilty to the charge, therefore, the prosecution to prove its case against him examined complainant/SIO SIP Munawar Hussain and his witnesses and then closed the side.

3. The appellant in his statement recorded u/s: 342 Cr.P.C denied the prosecution allegations by pleading innocence. He did not examine anyone in his defence or himself on oath.

4. On conclusion of trial, learned Additional Sessions Judge, Matiari found the appellant guilty for an offence punishable under section 13-D Arms Ordinance 1965 and then convicted and sentenced the appellant to undergo R.I for five years with benefit of section 382-Cr.P.C vide his judgment dated 18th May 2015, which is impugned by the appellant before this Court by way of instant appeal.

5. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case by the police by foisting unlicensed weapon upon him; the appellant has already been acquitted by the Court having jurisdiction in police encounter case and evidence of the prosecution being doubtful has been believed by learned Trial Court without lawful justification, therefore, the appellant is liable to his acquittal in present case.

6. Learned Assistant Prosecutor General, Sindh did not support the impugned judgment.

7. I have considered the above arguments and perused the record.

8. No Roznamcha entry is produced by the complainant or any of his witnesses whereby they were conducting patrol; its non-production has made the allegation of patrolling to be doubtful. The encounter whereby the appellant was apprehended by the complainant and his witnesses has proved to be ineffective, in all respect though it was within close range, which appearing to be surprising and has made the allegation of the complainant and his witnesses that the appellant was apprehended after an encounter to be doubtful. There is no independent witness to the incident, though the place of incident was said to be situated on busy road. There is no report of Forensic expert. The appellant is said to have been acquitted in main case relating to police encounter. In these circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

9. 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.

10. For what has been discussed above, the conviction and sentence recorded against the appellant by way of impugned judgment 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 is present in Court on bail, his bail bond is cancelled and surety is discharged.

11. The instant appeal is allowed accordingly.

JUDGE

Muhammad Danish Steno*