

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 66 of 2014

Appellant: Bashir Ahmed alias Bashoo son of Abdul Wahid,
Through Mr. Hameedullah Dahri, Advocate

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

Date of hearing: **06.12.2019**
Date of decision: **06.12.2019**

JUDGMENT

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant appeal are that the appellant was found in possession of unlicensed K.Kov with magazine containing two live bullets of 7.62 bore by police party of PS Daulatpur, which was led by complainant SIP Muhammad Sulleman Wagan, for that he was booked and reported upon.

2. At trial the appellant did not plead guilty to the charge and prosecution to prove it examined complainant SIP Muhammad Sulleman Wagan and his witnesses and then closed the side.

3. The appellant in his statement recorded U/S 342 Cr.P.C denied the prosecution allegation by pleading innocence; he did not examine anyone in his defence or himself on oath.

4. On conclusion of the trial learned Sessions Judge, Shaheed Benazirabad found the appellant guilty for offence punishable u/s 13-(d) Arms Ordinance and then convicted and sentenced him to undergo Rigorous Imprisonment for four years with fine of Rs.50,000/-and in case of his failure to make payment of fine to undergo Simple Imprisonment

for three months vide his judgment dated 15.05.2014, 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 falsely by the police by making foistation of unlicensed K.Kov upon him and there is no independent witness to the incident. By contending so, he sought for acquittal of the appellant.

6. Learned A.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal.

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

8. There is no independent witness to the incident. As per complainant he with his witnesses reached at the place of incident at about 2230 hours and found the appellant available there. He was apprehended there. On search from him was secured unlicensed K.Kov under mashirnama, the perusal whereof reveals that it was prepared at about 2230 hours. How it could be? Where the time consumed in apprehending the appellant, making enquiry, conducting his search and affecting the alleged recovery gone? No explanation it is offered by the prosecution, which has made the very recovery proceedings to be doubtful. The property has not been subjected to its examination through expert, which appears to be significant. None has been examined by the prosecution to prove the safe custody of the K.Kov allegedly recovered from the appellant. The

161 Cr.P.C statements of the PWs as per SIO / ASI Gul Hassan were recorded by Munshi Illahi Bux. He has not been examined by the prosecution for no obvious reason. In these circumstances, it could be concluded that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

9. In case of ***Muhammad Mansha vs the State (2018 SCMR 772)***

it has been held by Hon'ble apex Court that;

"Witnesses, in the present case, had made dishonest improvement in order to bring the case in line with the medical evidence, thus, conviction of accused was not sustainable on the testimony of said witnesses without independent corroboration which was conspicuously lacking in the present case."

10. Based upon above discussion, the conviction and sentence awarded to the appellant together with the impugned judgment are set-aside, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the 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 disposed of accordingly.

J U D G E