

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

Cr. Appeal No. S — 35 of 2007.

Appellant: Muhammad Alam s/o Muhammad Yaqoob.
In person

The State: Through Mr. Nazar Muhammad Memon,
A.P.G.

Date of Hearing: 09.12.2019.

Date of Judgment: .12.2019.

J U D G M E N T

RASHIDA ASAD, J.- The applicant being aggrieved and dissatisfied with the judgment dated 15.03.2007, passed by learned IInd Additional District Judge Hyderabad in Criminal Appeal No.92 of 2006, whereby the conviction and sentence awarded to the applicant-accused by learned Civil Judge & Judicial Magistrate in FIR No. 32 of 2005 of Police Station Hatri under section 13-D Arms Ordinance, vide judgment dated 30.06.2006 was maintained. Hence this revision application.

2. Briefly stated the prosecution case is that on 21.03.2005 at 0200 hours complainant ASI Malik Muhammad Bachal along with PC-Muhammad Moosa, PC-Dilbar Hussain, WHC Muhammad Soomar in Government Mobile left the police station vide roznamcha entry No.22 at 2110 hours for patrolling. When they reached at Andhy Je-Mori at 0040 hours they received spy information that accused Muhammad Alam who is involved in case crime No.21 of 2005 under section 324 PPC was standing at Chand Bus Stop near Isra University. After receiving such information police party rushed towards the pointed place and reached at 0100 hours at pointed place then police saw one person armed with gun, was standing there. On seeing police who tried to escape but police caught hold him along with gun No.25876. The gun was checked and found in working condition along with live cartridges. The recovered arms and ammunitions were sealed at the spot. Complainant then prepared such memo of arrest and recovery in presence of mashirs P.C Muhammad Moosa and P.C. Dilbar Hussain. The accused person along

with case property was taken to P.S Hatri and the instant case was registered against him on behalf of State.

3. After usual investigation challan was submitted against the accused under above referred section. Trial Court framed the charge against the applicant at Ex.02. Accused pleaded not guilty and claimed to be tried.

4. At the trial, the prosecution examined P.W.1 complainant ASI Malik Muhammad Bachal at Exh.03, who produced memo of arrest of accused and recovery of the arms and ammunitions, and roznamcha entries of arrival and departure at Exh.3/A B and C11, FIR of the case at Exh.3-D. P.W. 2 SIP Ibrahim at Exh.4, P.W. 3 HC Muhammad Moosa mashir of arrest and recovery at Exh.5. Thereafter, the learned P.I. for the State closed the side of prosecution vide statement at Exh.06.

5. Accused in his statement recorded under section 342 of the Criminal Procedure Code has denied the allegations. The applicant-accused examined himself under section 340(2) Cr.P.C. on oath and Defence witness namely Hussain Bux. The case of the accused is innocent and has falsely been implicated by the police in this case and that he was arrested from his hotel and nothing was recovered from his possession.

06. I have heard the appellant in person and scanned the entire evidence with the assistance of learned A.P.G. appearing for the State.

07. From the perusal of evidence, it transpired that the learned appellate court has failed to appreciate the fact that the prosecution has failed to make out its case against the applicant/accused beyond any shadow of doubt for the reasons that it was a case of spy information and complainant ASI Malik Bachal of Police Station Hatri, had sufficient time to call/associate any independent person of the area to act as mashir of arrest and recovery but the ASI deliberately avoided it for the reasons best known to him. The complainant has deposed that due to non-availability of private persons, he made his subordinate staff as mashirs in this case which is violation of section 103 Cr.P.C. It further reveals that the case property viz. gun with cartridges was not sent to ballistic expert for examination which has also created doubt in the prosecution case.

08. Mr. Nazar Muhammad Memon, learned A.P.G. for the State readout the prosecution evidence for the assistance of the Court and frankly conceded that there is violation of section 103 Cr.P.C. and further the case property was not sent to the ballistic expert for examination, and has committed an illegality which has caused dent in the prosecution

case. He therefore, submits that the prosecution had failed to prove the charge against the applicant-accused beyond reasonable doubt.

09. Perusal of record further reveals that there are so many contradictions in the evidence of prosecution witnesses, the benefit of which should be given to the applicant-accused, therefore, the findings given by the learned courts below are based on mis-reading and non-reading of the evidence.

10. It is settled principle of the law that for extending benefit of doubt multiple circumstances are not required. A single circumstance which creates reasonable doubt in the prosecution case is sufficient for extending benefit of doubt for recording the acquittal. In the case of **TARIQ PERVEZ v THE STATE [1995 SCMR 1345]**, the Honourable Supreme Court has observed as follows:-

“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

11. For the above stated reasons I have come to the conclusion that prosecution failed to establish its case against the applicant in view of the infirmities and illegalities in the prosecution case. Consequently, instant criminal revision application is allowed vide short order dated 09.12.2019. The impugned judgment dated 15.03.2007 and 30.06.2006 passed by the courts below are set-aside. Applicant is present on bail. His bail bonds stand cancelled and surety discharged.

These are the detailed reasons of my short order dated 09.12.2019.

JUDGE

A.