

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

Cr. Appeal No.S- 92 of 2015

Date of Hearing: 24.08.2020
Date of Judgment: 24.08.2020

Appellant: Hakim @ Haako s/o Bungul Jamali
(present on bail), through Mr. Mazhar
Ali Leghari, Advocate.

The STATE: Through Mr. Shahzado Saleem
Nahiyoan, D.P.G Sindh.

J U D G M E N T

NAIMATULLAH PHULPOTO, J.- Appellant was tried by the learned 2nd Additional Sessions Judge, Sanghar in Sessions Case No.240/2014, arising out of Crime No.56/2014 registered at P.S Mangli for offence u/s 23(1)(a) Sindh Arms Act, 2013. After regular trial, the appellant was convicted u/s 23(1)(a) Sindh Arms Act, 2013 and sentenced to five years R.I and to pay the fine of Rs.10,000/- In case of default in payment of fine, he was ordered to undergo SI for three months more. However, appellant was extended benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case as reflected in the impugned judgment are as under:-

“On 13.05.2014 at 0810 hours complainant ASI Iftikhar Ali Bajwa of P.S Mangli alongwith his subordinate staff namely PCs Nasir Mehmood, Inayat Ali and Ali Khan left police station in government vehicle No.SP:7439 with driver PC Irshad-ul-Haq, vide daily diary entry No.2 at 0810 hours for patrolling purpose. During patrolling from different places when they reached at Nara Canal Patri via Baqir Shah road, they received secret information that absconding accused of P.S Mangli namely Hakim Ali alias Hakoo Jamali is found standing at the bridge of Nara Canal of Mangli minor. After receiving such information they reached at the pointed place at 0930 hours where they saw one person who on seeing the police tried to slip away but police party stopped the vehicle, alighted from it and strategically apprehended him with the help of staff being suspicious under section 54 Cr.P.C. On query his disclosed his name as Hakim alias Hakoo son of Bangul Jamali r/o Village Laiq Jamali, Taluka Sanghar. On his personal search from left side fold of his trouser, one pistol of 30 bore with magazine was secured. On checking they found four live bullets of 30 bore. On demand of license of pistol and bullets, accused disclosed that same is without license. Accused was absconder in Crime No.108/2014 u/s 353, 506, 34 PPC, Crime No.43/2013 u/s 324, 353, 147, 148, 149 PPC and Crime No.46/2013 u/s 379, 34 PPC of P.S Mangli. Thereafter, such memo of arrest and recovery was prepared with the signatures of mashirs PCs Nasir Mehmood and Inayat Ali. Thereafter, arrested accused and recovered property was brought at police station where FIR against accused was registered.”

3. On the conclusion of usual investigation, challan was submitted against accused under Sections 23(i)(a) Sindh Arms Act, 2013.
4. Learned Trial Court framed the charge against appellant at Ex.2. Accused pleaded not guilty and claimed to be tried.
5. At the trial, prosecution, in order to establish its` case examined PC Nasir Mehmood (Mashir of arrest and recovery) at Ex.4, he produced the memo of arrest and recovery at Ex.4/A, memo of place of wardat at Ex.4/B, PW-2 Investigation Officer ASI

Atta-Mohiyuddin at Ex.5, he produced FIR at Ex.5/A and FSL report at Ex.5/B. PW-3 ASI Iftikhar Ali (complainant) at Ex.7, he produced the daily diary entry No.2 at Ex.7/A and list showing the criminal record of accused at Ex.7/B. Thereafter, prosecution side was closed.

6. Statement of accused was recorded under Section 342 Cr.P.C at Ex-9, in which accused claimed false implication in this case and denied the prosecution's allegation. Accused neither examined himself on Oath nor led any evidence in his defence.

7. Learned trial Court after hearing learned counsel for the parties and assessment of evidence vide judgment dated 30.06.2015 convicted and sentenced the appellant as stated hereinabove.

8. Learned advocate for the appellant mainly contended that it was the case of spy information; police had sufficient time to collect the independent and respectable persons of the locality to act as mashir in this case but police avoided without assigning the sound reasons. It is further submitted that in the FIR it is mentioned that pistol was without number but in the report of Ballistic Expert it is mentioned that number was rubbed. He argued that there are material contradictions in the evidence of prosecution witnesses. It is submitted that it was night time incident; source of light has not been mentioned. He further contended that prosecution failed to produce any evidence with regard to safe custody and safe transmission of

the pistol to Ballistic Expert. Lastly, it is submitted that the pistol has been foisted upon the appellant and appellant has been acquitted in main case. Learned counsel for the appellant in support of his contentions has placed reliance upon the cases reported as Ameenullah v. The State (2019 P.Cr.L.J Note 96) and Syed Maroof Shah v. The State (2019 P.Cr.L.J Note 108).

9. Mr. Shahzado Saleem Nahiyoon, learned D.P.G argued that prosecution has proved its` case that the appellant was found going armed with unlicensed pistol and report of the Ballistic Expert was positive. Learned D.P.G. supported the impugned judgment of the trial Court. He prayed for dismissal of the appeal.

10. The facts of this case as well as evidence produced before the Trial Court find the elaborate mention in the judgment passed by the Trial Court dated 24.04.2018, hence, the same need not to be repeated here so aso to avoid duplication and unnecessary repetition .

11. After hearing the learned counsel for the parties and having gone through the evidence available on record, I have come to the conclusion that the prosecution has failed to prove its` case against the appellant for the reasons that it was the case of spy information. Head of the police party failed to associate any independent and respectable person of the locality for making him as mashir in this case. It is the case of prosecution that appellant was arrested from Nara Canal and pistol was recovered from the

possession of accused at 09-30 p.m. but source of light has not been mentioned in evidence. In the prosecution evidence, it is stated that pistol was without number but in the report of Ballistic Expert it is mentioned that its` number was rubbed. It has come on record that appellant was absconding in the main case but in the said case, learned advocate for the appellant has filed statement that accused has been acquitted. Delay in sending the pistol to the Ballistic Expert has not been explained. After arrest of accused he was brought to the police station. Record is silent with regard to the safe custody of pistol at police station and safe transmission to the Ballistic Expert for report. Prosecution has utterly failed to prove the safe custody and safe transmission of pistol to the Ballistic Expert and no reliance can be placed upon such positive report of the Ballistic Expert as held by Honourable Supreme Court of Pakistan in the case of KAMAL DIN alias KAMALA v. The STATE (2018 SCMR 577), wherein the Honourable Apex Court has held as under:

“4. As regards the alleged recovery of a Kalashnikov from the appellant's custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice it to observe that Muhammad Athar Farooq DSP/SDPO (PW18), the Investigating Officer, had divulged before the trial court that the recoveries relied upon in this case had been affected by Ayub, Inspector in an earlier case and, thus, the said recoveries had no relevance to the criminal case in hand. Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission.”

12. In my considered view, prosecution has failed to prove its' case against the appellant. Circumstances mentioned above have created reasonable doubt in the prosecution case. It is settled law that it is not necessary that there should be 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. In this regard reliance can be placed upon the case of *Muhammad Mansha V/s. The State (2018 SCMR 772)*, wherein the Honourable Supreme Court has observed as follows:-

“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).”

13. In view of what has been discussed above, I have no hesitation to hold that the prosecution has failed to prove its' case against the accused. Resultantly, instant appeal is allowed. Conviction and sentence recorded by the trial court vide judgment

dated 30.06.2015 are hereby set aside. Appellant is acquitted of the charge. He is present on bail, his bail bond stands cancelled and surety discharged.

JUDGE

Tufail