

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

Criminal Revision Application No.S- 08 of 2015

Date of hearing: 13.04.2018.
Date of judgment: 13.04.2018.

Applicant is present on bail.
Mrs. Razia Ali Zaman Khan, Advocate for applicant.
Syed Meeral Shah, Additional Prosecutor General.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Applicant/accused was tried by the learned Assistant Sessions Judge Tando Muhammad Khan in Sessions Case No.25/2014 for the offence u/s 23 1(a) Sindh Arms Act, 2013. After full-dressed trial, vide judgment dated 29.10.2014 the applicant/accused was convicted u/s 23-1(a) of Sindh Arms Act and sentenced two years RI and to pay the fine of Rs.25,000/- In case of default in payment of fine, he was ordered to suffer SI for six months more. Applicant preferred appeal before the learned Sessions Judge, Tando Muhammad Khan and his appeal No.05/2014 was dismissed vide judgment dated 31.12.2014. Hence, this criminal revision application is preferred.

2. Brief facts leading to the filing of Criminal Revision application are that on 08.06.2014 at 2000 hours at Katcha path leading from Pinyari

Wah to village Dhabho Soomro, the applicant/accused was found going armed with a DBBL gun, with two live cartridges and he was apprehended by ASI Imran Hafeez in presence of the mashirs for which he had no license. Applicant/accused was brought to the police station and FIR was lodged by ASI Imran Hafeez on behalf of the State. It was recorded vide crime No.34/2014 u/s 23 1(a) Sindh Arms Act, 2013 at P.S. Bulri Shah Karim.

3. After usual investigation challan was submitted against the accused under the above referred section.

4. Charge was framed against the accused by the learned Sessions Judge Tando Muhammad Khan. Thereafter, case was transferred to the Assistant Sessions Judge, Tando Muhammad Khan where the case proceeded and evidence of witnesses was recorded. On the conclusion of trial, vide judgment dated 29.01.2014, the accused was convicted and sentenced as stated above. Accused preferred the appeal but the same was also dismissed, hence this criminal revision application.

5. Learned advocate for the applicant/accused has mainly contended that it was the case of spy information and ASI Imran Hafeez had sufficient time to associate the private persons of the locality to witness the recovery proceedings but it was not done by him. It is further argued that accused was arrested at 08-00 p.m and no source of identification has been disclosed by the prosecution. It is further argued that trial court conducted trial in a hasty manner and failed to provide a fair opportunity to the accused to engage the counsel of his choice. It is further argued that in order to ascertain the truth, atleast trial court should have put up some questions from the witnesses but it was not done and the accused himself cross examined the witnesses. It is also

contended that accused has been acquitted in the main case bearing crime No.32/2014 for offences u/s 506-2, 504, 337-H(ii) PPC registered at police station Bulri Shah Karim. It is submitted that there are material contradictions in the evidence of prosecution witnesses which have not been considered by the trial court. Lastly, it is submitted that the parcel sent to the ballistic expert is without date. In support of her contentions, learned counsel has placed reliance on the case of

6. Syed Meeral Shah, Additional Prosecutor General argued that there are infirmities in the prosecution case. Case property was sent to the ballistic expert but the date has not been mentioned. Learned A.P.G admitted that safe custody of the gun and its safe transit to expert have also not been established at trial. Learned A.P.G. referred to the annexure 5/D and stated that there is over writing in the roznamcha entry. He did not support the case of prosecution.

7. After hearing the learned counsel for the parties, I have scanned the entire evidence. I have come to the conclusion that prosecution had failed to prove its' case against the accused for the reasons that ASI Imran Hafeez had sufficient time to associate with him the private persons of the locality for making them as mashir in this case but he deliberately avoided. It is also highly questionable that the police party used the private vehicle but no reason has been assigned why the police mobile was not used for the patrolling. I have noticed that there are material contradictions in the evidence of prosecution witnesses with regard to the material particular of the case and overwriting in date of roznamcha. According to the case of prosecution DBBL gun without license was recovered from the possession of accused on 08.06.2014 but the gun and cartridges were sent to the ballistic expert on 13.06.2014. Delay in dispatch has not been explained. Safe custody of

the weapons at police station has not been established. Even safe transit has not been proved. Trial was conducted in a casual manner by the trial court and accused himself cross examined the witnesses. Witnesses were the police officials and experienced persons. Therefore, trial court should have put up some questions from the witnesses in order to ascertain the truth but learned trial judge did not perform duty properly. Accused has raised plea that he is the victim of his enemies and the gun has been foisted upon him. Accused placed on record a true copy of judgment dated 20.02.2016 passed by the learned Civil Judge & Judicial Magistrate-II, Tando Muhammad Khan in crime No.32/2014. This court has noticed a number of infirmities in the prosecution case even over writing in the roznamcha entry Ex.5/D. In these circumstances, learned A.P.G. rightly, recorded no objection in case instant revision application is allowed.

8. Apart from that safe custody of the recovered DBBL gun, cartridges and its safe transmission to the Forensic Science Laboratory had not been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission as held by the Honourable Supreme Court in the case of Kamal Din alias Kamala v. The State (2018 SCMR 577). The relevant portion whereof is reproduced hereunder:-

“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.”

9. For what has been discussed above, I have no hesitation to hold that the prosecution has utterly failed to establish its case against the accused. 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 rightly reliance has been placed upon the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)*.

10. Consequently, instant criminal revision application is allowed. Judgments passed by the trial court dated 29.10.2014 as well as appellate Court dated 31.12.2014 are hereby set aside. Applicant/accused is acquitted of the charge. He is present on bail, his bail bond stands cancelled and surety is hereby discharged.

JUDGE

Tufail