

IN THE HIGH COURT OF SINDH, KARACHI

Before: Mr. Justice Muhammad Saleem Jessar.

Criminal Appeal No. 75 of 2020

Appellant Babar Ali Solangi : Through Mr. Abdul Hafeez Sandhu, Advocate.

State : Through Mr. Zahoor Shah, D.P.G, Sindh, for the State.

Complainant : Through Mr. Fida Hussain, Advocate

Date of hearing : 04.02.2021

Date of Order : 04.02.2021

J U D G M E N T

Muhammad Saleem Jessar, J.- Through this appeal, Appellant has assailed Judgment dated 24.12.2019, handed down by learned Additional District & Sessions Judge-I, Karachi (East) in Sessions Case No.1709 of 2016 (re: The State Vs. Babar Ali Solangi), being outcome of FIR No.364/2016 registered at Police Station Shahrah-e-Faisal, Karachi, under Section 23(i)(a) of Sindh Arms Act, 2013, whereby he convicted the accused / appellant for the offence punishable under Section 23 (i) (a) of Sindh Arms Act 2013 and sentenced him to undergo R.I. for seven (7) years with fine of Rs.50,000/-. In case of default, appellant was directed further to undergo S.I for six months. However, the appellant was extended benefit of Section 382-B Cr. P.C.

2. The crux of the prosecution case are that on 19.06.2016 at about 1630 hours, SIO/SIP Muhammad Arif of P.S Shahrah-e-Faisal interrogated the accused who was already detained in crime No.336/2016 under Section 302/365/201 PPC. During interrogation, accused shown willingness to produce the pistol from which he committed murder of Mst. Sania Kanwal, at Johar Mor (curve), under the

bridge, Block-19, Gulistan-e-Johar, Karachi. Upon such disclosure made by accused, he along with accused and police party proceeded towards pointed place where the pistol was concealed/hidden under the earth. The accused took it out which was duly wrapped in shopper and produced to I.O. The pistol was of 9mm bore, bearing No.1191539F along with a magazine containing two live rounds. Thereafter, the SIO/SIP Muhammad Arif brought the accused and recovered property at police station where he lodged an FIR bearing No.364/2016 under Section 23(i) (a) of Sindh Arms Act, 2013 with P.S Shahrah-e-Faisal against the accused/appellant.

3. A formal charge was framed against the accused vide Ex.02 to which he pleaded not guilty and claimed to be tried vide his plea Ex.2/A.

4. In order to prove its case, prosecution examined PW-1/ASI Muhammad Tayyab at Ex.03, who produced photocopy of memo of arrest and recovery at Ex.03/A. PW-2/SIO SIP Muhammad Arif at Ex.04, who produced entry No.12 at Ex.05, entry No.20 at Ex.06, letter to FSL at Ex.07, FSL Report at Ex.08, road certificate at Ex.09 and FIR No.123/2018 at Ex.10. Thereafter, learned DDPP closed the side of prosecution vide his Statement Ex.11.

5. Statement of the accused was recorded under section 342 Cr. P.C. vide Ex.12 wherein he denied the prosecution allegations and claimed to be innocent. However, neither he examined himself on oath nor produced any witness in his defence.

6. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court vide impugned judgment convicted and sentenced the appellant / accused, as stated above. Against said judgment, the appellant has preferred instant appeal.

7. I have heard learned counsel for the appellant as well as learned D.P.G. appearing for the State and perused the material available on the record.

8. Learned counsel for the appellant at the very outset submitted that instant case is offshoot of main crime i.e. F.I.R. No.336 of 2016

registered at P.S. Shahra-e-Faisal, Karachi under Section 365/302/201 PPC vide Sessions Case No.1708 of 2016 (re- The State Vs. Babar Ali Solangi). He further submitted that appellant was convicted in the main case against which he filed Cr. Appeal No.S-76/2020 before this Court. He further submitted that appellant has already been acquitted of the charge of the main case by way of compromise vide judgment dated 04.02.2021 passed by this Court. According to him, since instant case is offshoot of the main case, therefore appellant deserves to be acquitted in this case too.

9. Learned Deputy Prosecutor General has frankly conceded to the submission of appellant's counsel and has candidly given his No Objection to the grant of instant appeal.

10. As stated above, the main contention of learned counsel for the appellant is that instant case is off shoot of main crime i.e. F.I.R. No.336 of 2016 registered at P.S. Shahrah-e-Faisal, Karachi, under Section 365/302/201 PPC vide Sessions Case No.1708 of 2016 (re- The State Vs. Babar Ali Solangi) in which he has already been acquitted of the charge, therefore appellant deserves to be acquitted in the instant case also.

11. It seems that the legal position in such a situation, as enunciated by the Superior Courts, is that when an accused has been acquitted in the main case, he would be entitled to acquittal in a case which is offshoot of the main case. In this connection, reference may be made to the case of Yasir Chaudhry Vs. The State reported in 2012 MLD 1315, wherein it was held by Honourable Lahore High Court as under;_

*"In the case reported as Manjhi v. The State (PLD 1996 Karachi 345) it has been held that when the accused has been acquitted in the main case, he would become entitled to acquittal in a case which is offshoot of the said case. Same is the position here, as the present lis is an offshoot of the main murder case, so, respectfully following the dictum laid down in the judgment supra, this petition is allowed and the application of the petitioner under section 249-A Cr. P.C. is accepted and the petitioner is **acquitted** from the charge in case F.I.R. No.17 of 2003 dated 12.1.2003 registered under section 7 of the Surrender of Illicit Arms Act No.XXI of 1991 with Police Station Civil Lines, Bahawalpur."*

12. Keeping in view above legal position, it can safely be held that when the accused / appellant has been acquitted in the main case and instant case being offshoot of said main case, the appellant deserves to be acquitted in this case also.

13. As stated above, learned Deputy Prosecutor General has also not controverted this legal position and has recorded his No Objection to the grant of instant appeal.

14. Accordingly, by a short order dated 04.02.2021, instant criminal appeal was allowed. Consequently, impugned judgment dated 24.12.2019, handed down by learned Additional District & Sessions Judge-I, Karachi (East) in Sessions Case No.1708 of 2016 (re: The State Vs. Babar Ali Solangi), being outcome of FIR No.364/2016 registered at Police Station Shahrah-e-Faisal, Karachi, under Section 23(i)(a) of Sindh Arms Act, 2013, was set aside and appellant Babar Ali Solangi son of Gul Hassan was acquitted of the charge. He was ordered to be released forthwith, as his custody was no longer required by jail authorities.

15. Above are the reasons for the short order.

JUDGE