

lodged FIR No.781/2015 under Section 23(i) A Sindh Arms Act, 213 against the above named accused on behalf of the State.

Investigation officer SIP Soukat Ali of the case after completion of investigation, submitted charge sheet before the Court of Law having jurisdiction.

After completion of codal formalities, formal charge (Ex.2) was framed by the trial Court against appellant to which he pleaded not guilty and claimed to be tried vide his plea (Ex.2-A).

To prove its charge, the prosecution has examined PW-1 Complainant SI Raja Muhammad Afzal at Ex.3, PW-2 ASI Raja Zauq Akhtar at Ex.04, PW-03 I.O/SIP Shoukat Ali at Ex. 5. Learned ADPP for the state closed the prosecution side vide his statement at Ex.6. Thereafter statement of accused was recorded under section 342 Cr.P.C. at Ex.7, wherein he denied allegations leveled against him by the prosecution and claimed himself to be innocent. However, he neither examined himself on oath nor led any evidence.

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

Learned counsel further submits that offensive weapon allegedly recovered from possession of the appellant was sent to laboratory for its examination after about delay of one day; besides there are many contradictions in the evidence recorded before the trial Court, therefore, case against appellant is full of discrepancies; hence, prosecution has not come with clean hands and such deficiency on the part of prosecution creates lot of doubts into the veracity of prosecution evidence which entitles the appellant to acquittal on the ground of benefit of doubt. Next submits that instant case is offshoot of main Crime No.741 of 2015 registered at P.S. Boat Basin, Karachi under Section 302/34 PPC and from the charge of said main case appellant has also been acquitted of the charge by way of judgment dated 11.11.2019 penned down by 1st Additional Sessions Judge/MCTC, Karachi (South) vide Sessions Case No.225/2016 (re-the State Versus Abdul Jabbar and another); hence, submits that appellant deserves his acquittal in this case too. In support of his contention, learned counsel places reliance upon the case of

MANJHI Versus The STATE (PLD 1996 Karachi 345) and RIAZ HUSSAIN KALHORO versus THE STATE (2004 P.Cr.L.J 290).

Learned Assistant Prosecutor General, Sindh appearing for the State, opposes the appeal; however, could not controvert fact that offensive weapon was sent to laboratory for examination with the delay of about one day. He is also not in a position to controvert the fact that appellant has been acquitted from the charge of main case by the trial Court vide Sessions Case No.225 of 2016.

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 be acquitted in a case which is offshoot of the main case. In this connection, reliance may be placed 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.”*

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

Accordingly, instant appeal is hereby allowed. Consequently, impugned judgment dated 29.12.2018, handed down by learned Additional Sessions Judge-VIII, Karachi (South) vide Sessions Case No.78 of 2016 (re: The State Vs. Waqar Ali), being outcome of FIR No.781/2015 registered at Police Station Boat Basin, Karachi, under Section 23(i) A of Sindh Arms Act, 2013, is set aside and appellant Waqar Ali son of Syed Muhammad is acquitted of the charge. He shall be released forthwith, if his custody is no longer required by jail authorities.

JUDGE