

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha J.

Mr. Justice Zulfiqar Ali Sangi J.

CRIMINAL JAIL APPEAL NO.04 OF 2021

Appellant : Akbar Hussain son of Masood Khan
through Mr. Habib-ur-Rehman Jiskani,
Advocate.

Respondent : The State through Mr. Muhammad Iqbal
Awan, Addl. P.G, Sindh.
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Date of Hearing : 25.10.2022

Date of Judgment : 31.10.2022

J U D G M E N T

ZULFIQAR ALI SANGI-J., Appellant was tried by learned VII Additional District & Sessions Judge, Karachi West in Sessions Case No.227 of 2020, bearing Crime No.519 of 2019 U/s 23(1)(A) Sindh Arms Act, 2013, registered at P.S Saeedabad, Karachi whereby appellant Akbar Hussain was convicted under section 23(i)-A of Sindh Arms Act, 2013 and sentenced to undergo Rigorous Imprisonment for four (04) years and six (06) Months with fine of Rs.20,000/- (Rupees Twenty Thousand Only), and in default thereof, he was ordered to undergo further Simple Imprisonment for five (05) months more vide judgment dated 26.10.2020. The benefit of section 382-B Cr. P.C was also extended to him. By means of this appeal the appellant has impugned the conviction and sentence awarded to him by the trial court.

2. The brief facts of the prosecution case are that on 06.11.2019 complainant ASI Ghulam Murtaza along with P.C Bilal, P.C Haider and DPC Iftikhar left the police station for patrolling the area in police mobile vide entry No. 37-2000 hours. During patrolling from different places when they reached KMC Graveyard Barsati Nala, Saeedabad Karachi at 0220 hours they saw that one person was coming in suspicious condition and was apprehended

tactfully. On inquiry, he disclosed his name as Akbar Hussain s/o Masood Khan and was holding one bag on his shoulder. Due to the non-availability of a private person police officials were made mashirs and in their presence he took the bag into police custody and on its checking he recovered one repeater of black colour along with five live cartridges. He also recovered one packet of charas from the said bag weighing 1070 grams. The recovered case property was sealed at the spot separately and the mashirnama was prepared which was signed by both the mashirs. On reaching the police station separate FIRs under the CNS Act and the Arms Act were registered.

3. After the usual investigation case was challaned before the court having jurisdiction and after completing legal formalities charge against the appellant was framed to which he pleaded not guilty and claimed trial. At the trial, the prosecution examined 03 witnesses including the complainant, mashirs of arrests and recovery and Investigating Officer who produced certain documents in support of the case of the prosecution.

4. The statement of appellant u/s 342 Cr. P.C was recorded wherein he denied prosecution allegations and pleaded his innocence. He, however, neither examined himself on oath nor led any evidence in his defence. After the trial, the learned trial court convicted and sentenced the appellant through impugned judgment as stated above. Hence the appellant has filed this appeal against his conviction.

5. Learned counsel for the appellant mainly contended that the appellant is innocent and has been falsely implicated in these cases; that repeater has been foisted upon him; that there are material contradictions in evidence of prosecution witnesses which has not been properly assessed by the learned trial Court; that the safe custody of Repeater has not been proved by the prosecution; that the alleged incident took place at KMC Graveyard near Rainy Channel, Saeedabad, which is busy road besides populated area on both sides but none from public was associated as a witness of the incident; that no independent witness has been joined and all

the witnesses are police officials, therefore, their evidence cannot be safely relied upon; that the prosecution failed to prove its case against the appellant beyond shadow of a reasonable doubt but learned trial court convicted the appellant, which is not sustainable in law and is liable to be set aside. He lastly prayed for the acquittal of the appellant.

6. On the other hand, learned Addl. P.G has contended that the prosecution has successfully proved its case by examining the P.Ws; who gave evidence that the appellant was caught red-handed on the spot and Repeater and Charas were recovered from him; that there are no major contradictions in the evidence of witnesses nor the same were pointed out by the defence counsel; that the impugned judgment does not suffer from any illegality or legal infirmity. He lastly prayed for the dismissal of the appeal.

7. We have heard learned counsel for the appellant as well as learned Addl. P.G and perused the material available on record with their able assistance.

8. The evidence of the prosecution witness is reassessed with the assistance of learned defence counsel and learned Addl. P.G for the state. As per the memo of arrest and recovery 05 live cartridges were recovered from the bag along with other articles and PW-1 complainant also deposed the same but when the sealed parcel was de-sealed in the court seven live cartridges and one empty cartridge was found. During the cross-examination, it was also admitted by the complainant and no explanation was furnished by the complainant. How is this plausible? The complainant deposed that the recovery was affected on 06-11-2019 when they were on the duty but PW-2 mashir during the examination-in-chief so also during his cross-examination stated that they were on patrolling duty on 07-11-2019 and the recovery was affected on 07-11-2019. The complainant admitted that he had not mentioned the descriptions available on the repeater in the mashirnama of recovery and arrest. The above-noted contradictions indicate that the complainant and mashir were not the true eyewitnesses of the incident and no such incident of the arrest of the accused and recovery of charas and repeater from the possession of the

appellant had occurred as alleged by the prosecution. Taking notice of the contradictions in the evidence of the complainant and the mashir, we find that the prosecution failed to prove its case against the appellant beyond a shadow of reasonable doubt and the recovery has not been satisfactorily proved. Both the witnesses contradicted each other on material aspects of the case. No implicit reliance can be placed in view of aforesaid contradictions on the evidence of prosecution witnesses.

9. After the reassessment of material as discussed above we have found that in the present case there are also a number of legal infirmities/lacunae, which have created serious doubt in the prosecution case. It is a settled principle of law that for extending the benefit of the doubt, there doesn't need to be multiple circumstances creating doubt. If a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in the case of **Tariq Pervez v. The State reported as (1995 SCMR 1345)**, wherein the Hon'ble Supreme Court has held as under:-

"The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, 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 will be entitled to the benefit not as a matter of grace and concession but as a matter of right".

10. Thus based on the particular facts and the circumstances of the present case and by relying on the above precedents of the Apex Courts, we are of the view that the prosecution has failed to prove the case against the appellant beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence. Therefore, we allow the instant appeal, set aside the impugned judgment dated 26-10-2020, passed by the learned VIII- Additional Sessions Judge Karachi West in Sessions Case No.227/2020 arising from Crime No.519/2019 U/s 23 (i) A,

SAA, of P.S. Saeedabad, Karachi and acquit the appellant Akbar Hussain s/o Masood Khan from the charges by extending him the benefit of the doubt. He shall be released forthwith if not required in any other custody case.

11. The above appeal is disposed of in the above terms.

JUDGE

JUDGE