

IN THE HIGH COURT OF SINDH AT KARACHI**Criminal Appeal No. 186 of 2018**

Appellant : Mohsin Ali
through Ms. Nazia Hanjrah, Advocate

Respondent : The State
through Ms. Seema Zaidi, DPG

JUDGMENT

Omar Sial, J. The appellant Mohsin Ali has impugned a judgment dated 6-3-2018 passed by the learned 5th Additional Sessions Judge, Karachi Central. In terms of the said judgment the appellant was convicted for an offence under section 24 of the Sindh Arms Act, 2013 and sentenced to suffer one year rigorous imprisonment and pay a fine of Rs.10,000 or suffer another period of one month if he defaulted in payment of the fine.

2. Brief facts of the case are that the appellant was arrested in crime number 407 of 2014 registered under sections 392, 397 and 34 P.P.C at the Taimooria police station. He was also in possession of a .30 bore pistol for which he could not provide a license therefore F.I.R. No. 408 of 2014 was registered against him for an offence under section 23(1)(a) of the Sindh Arms Act, 2013. The appellant was tried for both F.I.Rs and was acquitted in the case arising out of F.I.R. No. 407 of 2014.

3. The charge against the appellant was framed on 12-11-2014 to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined Mohammad Suleman Shaikh as its first witness. He was the person said to have been robbed by the appellant and the complainant of crime number 407 of 2014. S.I.P. Mitho Khan was the second witness who appeared for the prosecution. He was the complainant of crime number 408 of 2014. A.S.I. Rasheed Ahmed who was the investigating officer of the case was examined as the third prosecution witness.

4. Mohammad Suleman and the investigating officer of the case A.S.I. Rasheed Ahmed both admitted at the trial that the case property which was produced at trial was in an unsealed condition. Further, the memo of arrest and recovery does not give any description of the weapon seized by the police. The sketch of the seized arms and ammunition ostensibly drawn by the complainant on the spot shows two pistols, one with three bullets while the other is with four bullets. The FSL report records that both pistols were sent for examination with three bullets each. In such circumstances it

cannot conclusively be said that the weapon seized was the same as the one sent to the FSL for analysis and the one presented at trial.

5. In the main case i.e. arising out of F.I.R. No. 407 of 2014, the learned trial court had acquitted the appellant. The learned trial judge observed that the telephone said to have been robbed by the appellant could not be proved. The same set of witnesses was not believed by the learned trial court.

6. The appellant was tried for an offence under section 23(1)(a) of the Sindh Arms Act, 2013 but finally convicted for an offence under section 24 of the said Act. Section 24 of the Act provides as follows:

Whoever possesses arms or ammunition licensed or unlicensed with the aim to use them for any unlawful purpose or to facilitate any other person to use them for any unlawful purpose shall, whether such unlawful purpose has been materialized or not, the license holder, the user and the person who has no license, be punishable with imprisonment for a term which may extend to ten years and with fine.

7. The above section shows that the same will come into effect when possession of a licensed or an unlicensed weapon was for an unlawful purpose or to facilitate another person to use them for an unlawful purpose. The prosecution led no evidence to satisfy this requirement of section 24. To the contrary, as mentioned above, the appellant was acquitted of the charge of robbery.

8. In view of the above, there was considerable doubt in the prosecution case, the benefit of which should have gone to the accused.

9. Above are the reasons for the short order dated 17.10.2018 which was as follows:

“For reasons to be recorded later on, appeal is allowed and the appellant is acquitted of the charge(s). He be released forthwith if not required in any other case(s).”

JUDGE