

IN THE HIGH COURT OF SINDH AT KARACHI**Criminal Appeal No. 381 of 2018**

Appellant : Farhan @ Indian
through Ms. Nazia Hanjrah, Advocate

Respondent : The State
through Ms. Seema Zaidi, DPG

ORDER

Omar Sial, J.: The appellant Farhan @ Indian was accused of possessing an unlicensed 9 mm pistol and three live bullets on 1-1-2014. He was charged for an offence under section 23(1)(a) of the Sindh Arms Act, 2013. After a trial he was convicted and sentenced by the learned 4th Additional Sessions Judge, Karachi South vide his judgment dated 2-6-2018 to three years rigorous imprisonment and a Rs. 20,000 fine or another three months simple imprisonment if he defaulted in payment.

2. Brief facts of the prosecution case are that while the appellant was in custody in another cases, he confessed to the police that he has an unlicensed pistol that he has kept in his room situated in Abdullah Street in Lea Market and with which pistol he has committed the murders and attempted murders in the cases he has been charged with. He then led the police to the said room from where the pistol was recovered.

3. The appellant pleaded not guilty to the charge and claimed a trial. In order to prove its case the prosecution examined Inspector Mohammad Anwar as its first witness. He was the complainant of the case. The second witness was A.S.I. Mohammad Nawaz Ranjha who was the investigating officer of the case. The third prosecution witness was H.C. Syed Zulfiqar Shah who was the witness to the recovery.

4. I have heard the learned counsel for the appellant as well as the learned D.P.G. and have also examined the record with their able assistance. My observations are as follows.

- (i) It appears that the appellant was implicated in ten cases and that he has been acquitted in all ten. Judgments reflecting the same have been put on record. In other words, the appellant was found not guilty in all the cases, it is said the weapon was used in.

- (ii) The memo of recovery of the pistol made on 1-1-2014 contains a sketch of the recovered pistol made on it. The sketch clearly shows the text "IHIK CAL 9 mm Made in Germany Special HK" written on it. The said text does not find mention in the FSL report issued pertaining to the weapon. The letter under cover of which the pistol was sent to the FSL for examination bears a date of 2-1-2014 but the FSL report reflects that the letter under cover of which the weapon was received by the FSL was undated. It was not explained as to where the weapon was kept while it was in police possession nor as to who took the weapon to the FSL. In such circumstances it cannot be said conclusively that the weapon seized was the same as the one sent to the FSL and then produced at trial. In any case, the appellant was not confronted with the FSL report during the recording of his statement under section 342 Cr.P.C., which in accordance with a series of judgments of the Hon'ble Supreme Court corroded entirely the evidentiary value of the said report.
- (iii) Admittedly, the place where the weapon was supposedly recovered did not belong to the appellant in any manner. No evidence was led at trial as to who the owner or the tenant of the said building or the room from where the pistol was recovered was. No investigation was conducted by the investigating officer in this regard and no effort to make the owner or tenant as a witness or an accused was made. While it was claimed that the neighborhood people had stated that the building was in the use of a gang, no witness statements were recorded in this behalf.
- (iv) The investigating officer of the case, A.S.I. Mohammad Nawaz Ranjha testified that he had not made the relevant entry in the police daily diary that the investigation along with the case property had been handed over to him.
- (v) The complainant Mohammad Anwar admitted that while there were several persons at the place from where recovery was made he did not even make an effort to include any such person as witness to the search. His statement was in stark contrast with the testimony of the witness to the recovery H.C. Syed Zulfiqar Shah, who said that there was no other person available on the scene. Obviously one of the two witnesses, or perhaps both, was not being truthful.

- (vi) In view of the above, the prosecution was unable to prove its case against the appellant beyond reasonable doubt, the benefit of which doubt should have gone to the accused.

- (vii) Above are the reasons for the short order dated 13-12-2018 which was as follows:

“For reasons to be recorded later on, appeal is allowed and the sentence and conviction of the appellant vide judgment dated 2.6.2018 passed by IV Additional Sessions Judge, Karachi South is set-aside. The appellant be released forthwith if no required in any other case.”

JUDGE