

IN THE HIGH COURT OF SINDH AT KARACHI**Criminal Jail Appeal No. 519 of 2017**

Appellant : Mohammad Dawood @ Talat
through Ms. Farah Khan, Advocate

Respondent : The State
through Mr. Zahoor Shah, DPG

Date of short order : 18th October, 2018

Date of detailed reasons : November, 2018

ORDER

Omar Sial, J. The learned 4th Additional District & Sessions Judge, Karachi Central on 25-8-2017 convicted the appellant Mohammad Dawood for an offence under section 23(1)(a) of the Sindh Arms Act, 2013 and sentenced him to suffer rigorous imprisonment for five years and pay a fine of Rs. five thousand or suffer another period of six months imprisonment if he did not pay the fine. Mohammad Dawood has impugned this judgment of the learned trial court in these proceedings.

2. At the very outset the learned counsel for the appellant submits that the appellant was not given an opportunity of fair trial and prays that the case be remanded back to the learned trial court to conduct a fresh trial. In support of her contention she submitted that the appellant was not permitted to be represented by a counsel and that the learned trial court had asked the accused to himself cross examine the witnesses. According to her the appellant was adversely affected by this.

3. The record of the case reveals that the charge against the appellant was framed on 3-5-2017. On three succeeding dates, prosecution witnesses were absent and no lawyer appeared on behalf of the appellant. On 10-7-2017 the first witness Ishrat Ali was examined and the appellant asked to conduct the cross examination. On the next date i.e. 26-7-2017 the testimony of the remaining two witnesses namely Khursheed Ahmed and Afzal was recorded and once again the accused was asked to cross examine the witnesses. The prosecution side was closed the same day. It appears that no opportunity was given to the accused to engage a counsel or be provided a counsel at State expense. There was no delay in trial that can be attributed to the appellant. In a

case where the liberty of a person is at stake it is imperative that the accused be provided reasonable opportunity to be represented by a counsel. If an accused is unable to engage a counsel or delay is being caused in trial upon the failure of the accused to engage a counsel then one must be given to him at State expense. It appears that the accused was not given an opportunity of fair trial. The learned D.P.G does not oppose the learned counsel's request that the case be remanded back to the trial court for a fresh trial.

4. Above are the reasons for the short order dated 18.10.2018 which was as follows:

“For reasons to be recorded later on, the appeal is allowed and the impugned judgment dated 25.8.2017 is set aside. The case is remanded back to the learned trial court with the directions that the accused be given an opportunity to cross examine the witnesses through counsel. The trial court shall ensure that if accused has no financial means to engage a counsel, a counsel on State expenses is provided to him. Let this exercise be completed within two months and compliance report submitted through MIT-II.”

JUDGE