

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 264 of 2017

Appellant : Junaid through Mr. Habib-ur-Rehman Jiskani,
Advocate

Respondent : The State
Through Mr. Siraj Ahmed Khan Chandio, APG

JUDGMENT

Omar Sial J: Junaid s/o Abdul Rehman has filed this appeal challenging a judgment of the learned 9th Additional Sessions Judge, Karachi East rendered on 10-6-2017. In terms of the said judgment Junaid was sentenced to 8 years imprisonment and a fine of Rs. 20,000 (or 1 month further punishment in lieu thereof) for an offence under section 23(1)(a) of the Sindh Arms Act, 2013.

2. A brief background to the case is that on 7-1-2016 a police party headed by ASI Zulfiqar received information that a suspicious man was sitting on a drain in Korangi. The police went to the identified spot and apprehended the appellant who had one .30 bore pistol on him together with 3 live bullets in it. He was arrested and a case registered.

3. The appellant pleaded not guilty and claimed trial. The prosecution, in order to prove its case examined witnesses. The first witness was PC Hameer Ali who was a witness to the arrest and recovery. The second prosecution witness was Zulfiqar Ali Kiyani, the police officer who arrested the appellant. Rafiquddin was the third prosecution witness who was the investigating officer of the case.

4. The memo of recovery records that the weapon seized had a black tape wrapped round its handle. The sketch of the weapon drawn on the same memo does not show any tape wrapped around its handle. Both witnesses in their testimony did not even state that the appellant was asked for the license of the weapon, even if the same was recovered from him. Zulfiqar and Hameer contradicted each other on the place where the memo of arrest and recovery was made. According to Zulfiqar, he made it sitting in the police mobile whereas according to Hameer, Zulfiqar made it while standing outside the mobile resting the paper on the bonnet of the mobile. Zulfiqar testified that the investigating officer of the case inspected the place of incident pointed out by him at 1:00 a.m.

on 7-1-2016 whereas the investigating officer of the case Rafeequddin testified that he had inspected the place of incident at 11:30 a.m. on 7-1-2016 i.e. 10 hours after Zulfiqar said that the investigating officer had inspected the place of incident. The cover letter of the weapon sent to the FSL for examination shows that the sealed parcel was not opened by the authorised representatives of the FSL but by the investigating officer himself who also certified that the weapon was in working condition. One of the factors that has weighed in on the mind of the learned trial judge is that Junaid was involved in another offence earlier arising out of FIR No. 360 of 2015 registered under section 302 and 34 P.P.C. at the Korangi police station. The learned counsel for the appellant has put on record a copy of the judgment rendered by the learned 1st Additional Sessions Judge, Karachi East that reflects that the appellant was acquitted in that crime.

5. In view of the above it cannot be conclusively said that the weapon allegedly recovered from the appellant was the same one which was sent to the FSL for analysis and produced at trial, hence doubt is created, the benefit of which doubt must go to the accused. Consequently, the appeal is allowed and the appellant acquitted of the charge. He may be released forthwith if not required in any other case.

JUDGE

Dated of announcement : 1.2.2021