

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Cr. Appeal No.S-113 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
-------------	---

For hearing of MA-7941/2022

Date of hearing : 28.10.2022
Date of judgment : 28.10.2022

Appellants Yasin : Through Mr. Muhammad Yaseen
S/o Abdul Hakeem : Laghari, Advocate.
Burdi Rind

The State : Ms. Sana Memon, Assistant P.G.
Sindh.

JUDGMENT

Muhammad Saleem Jessar, J.- Through instant criminal appeal, appellant has impugned the judgment dated 31.08.2022 passed by learned Additional Sessions Judge, Shahdadpur vide Sessions Case No.134/2011, (re: The State v. Yasin son of Abdul Hakeem), arising out of FIR No.49/2021 registered at P.S Shahdadpur, under Section 23(i)(A) of Sindh Arms Act, 2013, whereby he has been convicted and sentenced to suffer rigorous imprisonment for 05 years and to pay fine of Rs.50,000/-; in default thereof, to suffer simple imprisonment for one month; however, benefit of Section 382-B Cr.P.C has been extended to him.

2. The crux of the prosecution case is that on 05.03.2021, complainant ASI Muhammad Saleh of P.S Shahdadpur had left Police Station in official vehicle at 1730 hours, vide roznamcha entry No.12, alongwith PCs Ghulam Mustafa, Imtiaz and DPC Hazoor Bux for the purpose of patrolling in the area. During patrolling they saw a person

(present appellant) standing in suspicious manner at Lundo Shaakh Mori Birahoon Road, who on seeing the police party tried to run away but was arrested and from his personal search, one unlicensed 9 M.M. Pistol alongwith magazine, containing three live bullets was recovered from his possession. Such mashirnama of arrest and recovery was prepared at spot and thereafter accused and case property were brought to P.S where instant F.I.R was lodged against him on behalf of the State.

3. After completion of usual as well legal formalities a formal charge against the appellant was framed to which he pleaded not guilty and claimed to be tried.

4. To prove its charge, the prosecution examined PW-01 ASI Muhammad Saleh (complainant) at Ex-4, who produced attested copy of departure entry No.12 as Ex-4/A; mashirnama of arrest and recovery as Ex-4/B; arrival entry No.28 at Ex/4-C; and a copy of FIR at Ex4-D. PW-02 PC Ghulam Mustafa (Mashir) was examined at Ex-5, who produced only mashirnama of place of incident as Ex-5/A. PW-03 SIP Manzoor Ali (I.O) was examined at Ex-6, who produced entries No.8 & 9 on one page duly attested as Ex-6/A and FSL report as Ex-6/B. Thereafter, the prosecution closed its side vide statement as Ex-7.

5. The statement of appellant under Section 342 Cr.P.C was recorded at Ex-8, where he denied the allegations leveled by the prosecution against him and claimed his innocence by not examining himself on oath, nor leading any evidence in his defense.

6. Learned Counsel for appellant submits that infact appellant was taken away and confined illegally by the Police at P.S Jhol District Shahdadpur; therefore, his father Abdul Hakeem filed Criminal Miscellaneous Application No.34 of 2021 under Section 491 Cr.P.C. Consequently, a raid was conducted

by the Judicial Magistrate at P.S Jhol; however, the custody of appellant was not found; therefore, said application was dismissed by the concerned Court on 02.03.2021. He next submits that though the alleged weapon as shown against appellant was recovered from his possession on 05.03.2021; yet it was sent to FSL for its examination on 04.03.2021 (vide FSL report at Page-26 of the paper book). He; therefore, submits that appellant was in custody of the Police and when he failed to grease the palms of Police, the Jhol Police handed over his custody to P.S Shahdadpur, where he was booked under this crime and the weapon as allegedly shown was not recovered from his possession. He next submits that such glaring features on the part of prosecution show that the Police have charged him mala fidely and the prosecution has not come with its clean hands; hence, the evidence adduced is full of doubts which ever goes in favour of the accused. He; therefore, prays for allowing the appeal.

7. Learned Assistant P.G appearing for the state opposes the appeal on the ground that the application filed by appellant's father under Section 491 Cr.P.C. was dismissed on 02.03.2021 and instant case was registered on 05.03.2021; therefore, the plea taken by appellant carries no weight. She; however, does not controvert the fact that pistol was recovered on 05.03.2021 and it was sent to the Laboratory on 11.03.2021 after six days of its recovery.

8. Heard arguments and perused the record.

9. Before discussing merits of the case, I would prefer to take into consideration the plea taken by the appellant regarding his detention by Jhol Police prior to the registration of instant case. It is the case of appellant that he was taken away by the Police party headed by SHO P.S Jhol on 26.02.2021 and thereafter his father Abdul Hakeem filed a Criminal Miscellaneous Application No.34 of 2021 under Section 491 Cr.P.C before the Court of Sessions. Consequently, a raid was

conducted by the Judicial Magistrate; however, at the time of raid his custody was not found at P.S Jhol; therefore, application filed by his father was dismissed on 02.03.2021. The certified copy of said application was placed before the trial Court through statement dated 31.08.2021. All this was discuss by the trial Court under the impugned judgment; however, not kept in juxtaposition with the prosecution case. The filing of application under Section 491 Cr.P.C by appellant's father shows that the appellant was in custody of the police prior to registration of instant case and when they filed an application under Section 491 Cr.P.C instead of greasing their palms, the police became annoyed and his custody was handed over to other police station i.e. P.S Shahdadpur where he was shown to have been arrested alongwith an unlicensed weapon. Inspite of this documentary evidence the trial Court did not appreciate or consider it with prudent mind; yet has relied upon the evidence of the so-called prosecution witnesses; though all the PWs were suggested by the Counsel regarding filing of said application; yet this cogent plea was not considered. When the applicant as per available material was in custody of police right from 26.02.2021 then how he came out from the clutches of police after dismissal of application filed by his father and was found available at the place of incident alongwith an unlicensed weapon. All this shows that the police, in order to water their annoyance and ill-will so that no one should dare to raise voice against the Police, had taught a lesson to him as well his family so that they may meet with their unjustified demands. Before parting with the judgment, I am once again surprised and not in a position to gather the wisdom behind the filing of 491 Cr.P.C application by the father of appellant before the Court having jurisdiction and per contents of said application the appellant was in wrongful confinement of the police; however, said police had denied to have the custody of appellant which resulted in dismissal of the application filed by the appellant's father. If for a while it may be presumed that appellant's father

had wrongly filed such application; then what was the wisdom behind such exercise, whether he was knowing that the police is going to implicate his son in some criminal case by foisting incriminating substance against him and if it was not the case; then subsequent involvement of his son (appellant) by the police in this case through another Police Station proves that SHO P.S Jhol in order to get shield from his superiors and to make dupe to the Court of law had shifted his custody to his counterpart i.e. SHO P.S Shahdadpur, who by extending helping hand implicated the appellant by foisting the weapon against him. In both circumstances, it has become crystal clear that the prosecution had not come with its clean hands as the manner of crime does not connect the appellant with present offence; more particularly when there is no CRO or criminal history of the appellant, nor he had ever been proved to be convicted for any offence by any competent Court of law.

10. Another important aspect of the case is that alleged weapon was recovered from him on 05.03.2021; however, it was sent to Laboratory on 11.03.2021 through P.C Imran Ali with delay of about six days and the prosecution has not explained the delay so caused in sending the weapon to Laboratory; even its safe custody has not been established by the prosecution before the trial Court, nor PC Imran Ali, who dispatched the case property to FSL has been examined before the trial Court in order to dig out the fact regarding the weapon alleged recovered from appellant. In this respect, reliance is placed upon the case of KAMAL DIN alias KAMALA v. The STATE (2018 SCMR 577) where it has been held that;

“4. As regards the alleged recovery of a Kalashnikov from the appellant's custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice it to observe that Muhammad Athar Farooq DSP/SDPO (PW18), the

Investigating Officer, had divulged before the trial court that the recoveries relied upon in this case had been affected by Ayub, Inspector in an earlier case and, thus, the said recoveries had no relevance to the criminal case in hand. Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission.”

11. All the above features, which could be termed as major discrepancies, suggest that nothing was recovered from his possession but the Police in order to strengthen the rope of their false case have managed to justify the allegations against the appellant. These facts if put together would make it overall clear that case against the appellant is not free from doubt. It is settled law that when there is a single circumstance creating doubt in favour of the accused, the benefit of which has to be extended to him not as a matter of grace or concession but as a matter of right. In the above discussion, so many discrepancies have been pointed out in the prosecution case and connection of the appellant with the crime has not been proved beyond a reasonable doubt. It is also settled law that prosecution has to stand on its own legs to prove charge against accused and the benefit of doubt, even a slightest, if arises out of the prosecution case, shall go in favour of the accused as his right but not grace or concession. Reliance in this respect may be placed upon the case of MUHAMMAD MANSHA v. The STATE (2018 SCMR 722).

12. For what has been discussed above, I am of the opinion that prosecution has failed to establish its charge against the appellant beyond a reasonable doubt and while giving benefit of doubt to appellant, the appeal in hand is hereby allowed and the impugned judgment dated 31.08.2022

is set aside. Consequently, appellant Yasin son of Abdul Hakeem is hereby acquitted of the charge. He shall be released forthwith if his custody is no more required in any other custody case.

JUDGE

Shahid