

**IN THE HIGH COURT OF SINDH CIRCUIT COURT  
HYDERABAD**

Criminal Jail Appeal No.S-129 of 2015

Appellant: Asghar through Mr. Abdul Hameed  
Bajwa, Advocate.

Respondent: The State through Ms. Rameshan Oad,  
Assistant Prosecutor General Sindh.

Complainant: Expired.

Date of hearing: 12.08.2022.

Date of Judgment: **.08.2022.**

**J U D G M E N T**

**AMJAD ALI SAHITO, J.** Through instant criminal jail appeal, the appellant has challenged the judgment dated 07.09.2015, passed by the learned Sessions Judge, Tando Muhammad Khan in Sessions Case No.18/2013 arising out of the FIR No.45/2013 for offence under sections 23 (i) (a) Sindh Arms Act, 2013, registered at PS Bulri Shah Karim, whereby the appellant was convicted under sections 23 (i) (a) Sindh Arms Act, 2013 and sentenced to suffer for four years R.I. with direction to pay fine of Rs.10,000.00 [Rupees ten thousand only]; in case of failure to undergo S.I. for two months. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

**2.** The brief facts of the prosecution case as depicted in the FIR are that on 21.07.2013 at 1530 hours, the appellant voluntarily produced a SBBL Gun from in front of his house, sugar cane crop situated at village Muhammad Yaqoob Kapri, as

such, he was booked in above mentioned crime by preparing such memo recovery under the signatures of private mashirs Ghulam Shabbir Kapri and Noor Ahmed Kapri.

**3.** It is pertinent to mention here that this case is outcome of main crime bearing No.42/2013 for offence under sections 302, 324, 114, and 34 PPC registered at PS Bulri Shah Karim against the appellant and co-accused; and the recovered SBBL gun is stated to have been used in the commission of aforementioned main crime, which was voluntarily produced by the appellant during interrogation.

**4.** After usual investigation, report under section 173 Cr.P.C (Challan) was submitted against the appellant and co-accused before the concerned Magistrate.

**5.** Charge was framed against accused at Ex. 03, to which he pleaded **“not guilty”** and claimed to be tried vide his plea recorded at Ex. 04. In order to establish its case, the prosecution has examined PW-01 mashir Ghulam Shabbir, who produced carbon copy of memo of recovery of SBBL gun at Ex. 05/A and PW-02 complainant ASI Qurban Ali Gopang was examined at Ex. 06, who produced FIR, certified true copies of roznamcha entry No.07, 09 and Ballistic Expert’s report at Ex.06/A to Ex. 06/D respectively. Thereafter, prosecution closed its side through statement submitted by learned ADPP for the State at Ex. 07.

**6.** The statements of the accused under Section 342 Cr.P.C was recorded at Ex. 08 respectively, wherein he denied the prosecution allegation by stating that no any weapon was recovered from his possession and the same has been foisted upon him by the police. He claimed his innocence. However, he either examined himself on oath nor led defense evidence in disproof of allegation levelled against him.

**7.** The learned trial Court after hearing the counsel for the parties and on the assessment of the evidence, convicted and sentenced the appellant/accused in the manner as stated above.

**8.** Learned counsel for accused/appellant argued that the appellant has been falsely implicated at the instance of complainant due to matrimonial affairs and the alleged recovered weapon has been foisted in order to strengthen the main case under section 302 PPC being crime No.42 of 2013 registered at PS Bulri Shah Karim; that there are major contradictions in the prosecution evidence and it is well settled principle of law that even a single material contradiction creating doubt in the prosecution, which always goes in favour of the accused, therefore, prayed that the appellant / accused may also be acquitted of the charge by extending benefit of doubt in his favour.

**9.** On the other hand, learned A.P.G. Sindh has contended that the prosecution has fully established the case against the appellant by adducing convincing evidence. The recovery has been effected from the accused on his own pointation in presence of private mashirs. The said recovered crime weapon was used in the commission of main crime, which resulted death of an innocent human. She, therefore, supported the impugned judgment and prayed for dismissal of instant appeal.

**10.** I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance.

**11.** On the assessment of the material brought on the record, it appears that PWs ASI Qurban Ali and mashir Ghulam Shabbir Kapri during course of their evidence have deposed that the recovery of SBBL Gun was recovered from the possession of appellant. Both these witnesses have corroborated each other in line with the contents of recovery of memo of recovery. It appears

that the appellant during course of interrogation in main crime as stated above volunteered to produce crime weapon and on his pointation the recovery of SBBL gun was effected. Despite cross-examination of these witnesses by the learned defense counsel, their evidence could not shattered. The prosecution has established its case against the appellant through confidence inspiring evidence. The appellant during his recording of his statement under section 342 Cr.P.C. has failed to bring on record the reasons as to why has been implicated in the instant case; even, he did not examine himself on oath or led defense witnesses in order to make the prosecution case to be false. There is no *mala fide* or evidence brought on record on behalf of the appellant to show his false implication. However, sufficient material is available on record against the appellant which clearly shows that the SBBL gun was recovered from him on his pointation. The said gun was used in the commission of main crime registered against appellant for committing murder of one Haji Muhammad Kapri. No single material contradiction is in the evidence of prosecution witnesses.

**12.** In view of the above facts and circumstances, I have concluded that the prosecution has successfully established its case against appellant and the learned counsel for the appellant has failed to pin point any material irregularly or serious infirmity committed by the learned trial Court while passing the impugned judgment which in my humble view is based upon proper appreciation of evidence and the same does not call for any interference of this Court. Thus, the conviction and sentence awarded to the appellant by the learned trial Court are hereby maintained and the captioned Criminal Jail Appeal filed by the appellant merit no consideration, which is **dismissed** accordingly.

**JUDGE**

