

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Special Anti-Terrorism Appeal No. D-78 of 2022.

Before:

Mr. Justice Irshad Ali Shah,
Mr. Justice Zulfiqar Ali Sangi.

Appellant: Siraj Ahmed @ Gajo son of Miandad by caste Jatoi **through** Mr. Rukhsar Ahmed Junejo advocate.

The State: Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

Date of hearing: 03-01-2024

Date of judgment: 03-01-2024

J U D G M E N T

IRSHAD ALI SHAH, J;- It is alleged that on arrest from the appellant was secured unlicensed TT pistol of 30 bore with magazine containing 04 live bullets of same bore which he allegedly used while having an encounter with police party of PS Baberloi led by SIP Muhammad Eidan; whereby HC Munwar Ali lost his life, for that he was booked and reported upon by the police. On conclusion of trial was convicted under section 13 (d) Arms Ordinance, 1965 and sentenced to undergo rigorous imprisonment for 07 years and to pay fine of Rs. 20,000/- and in default whereof to undergo simple imprisonment for 02 months with benefit of section 382(b) Cr.P.C by learned Special Judge, Anti-Terrorism Court, Khairpur vide judgment dated 25-05-2022, which he has impugned before this Court by preferring the instant Appeal.

2. It is contention by learned counsel for the appellant that the appellant being innocent and juvenile offender has been involved in this case falsely by the police by foisting upon him unlicensed pistol and evidence of the PWs being doubtful in its

character has been believed by learned trial Court without assigning cogent reasons; therefore the appellant is entitled to his acquittal by extending him benefit of doubt, which is opposed by learned APG for the State by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It was stated by PWs/mashirs PC Dhani Bux and PC Wazir Ali that on arrest from the appellant was secured by SIP Muhammad Eidan, the unlicensed pistol with magazine containing 04 live bullets of same bore under memo, which he prepared at the spot in their presence, which they attested. SIP Muhammad Eidan being complainant and star witness of the incident has not been examined by the prosecution on account of his death; his non examination in case like the present one could safely be resolved in favour of the appellant. As per memo of arrest and recovery, the pistol allegedly recovered from the appellant was having no number. As per report of ballistic expert, the number of the pistol secured from the appellant was found rubbed. There is line of demarcation between word *without number and number having been rubbed*. Such inconstancy could not be over looked. The report of ballistic expert even otherwise has not been produced in evidence in accordance with law; its production by way of statement obviously has denied the right of defence/cross examination to the appellant on such valuable document. The I.O/SIP Nadeem Ahmed Chachar too has not been examined by the prosecution being ill. The identity of his signatures on documents prepared during course of investigation of the present case by PC Khadim Hussain hardly satisfies the requirement of law. The appellant during course of

his examination u/s 342 Cr.P.C has pleaded innocence and such plea on his part could not be lost sight of in circumstances of the present case.

5. The conclusion which could be drawn of above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit he is found entitled.

6. In case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex court that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

7. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, he is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court; he shall be released forthwith, if not required to be detained in any other case.

8. The instant appeal is disposed of accordingly.

JUDGE

JUDGE