

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-131 of 2023

Appellant: Manthar son of Shafi Muhammad by caste Mazari **through** Mr. Alam Sher Bozdar, advocate.

The State: **Through** Zulfiqar Ali Jatoi, Additional Prosecutor General.

Date of hearing 22-01-2024.

Date of decision 22-01-2024.

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of the prosecution that on arrest from the appellant was secured unlicensed pistol of 30 with magazine containing two live bullets of same bore by police party of PS Ubauro led by ASI Bajhi Khan, for that he was booked and reported upon by the police. On conclusion of trial the appellant was convicted u/s 25 of Sindh Arms Act, 2013 and sentenced to undergo rigorous imprisonment for seven year and to pay fine of Rs. 50,000/- and in default whereof to undergo simple imprisonment for six months with benefit of section 382 (b) Cr.P.C by learned Additional Sessions Judge Daharki, vide judgment dated 30-10-2023, which the appellant impugned before this Court by way of instant Crl. Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police by foisting upon him unlicensed pistol and has been

convicted and sentenced by the learned trial Court on the basis of improper assessment of evidence, which was doubtful in its nature; therefore, he is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned Additional P.G for the State by contending that the prosecution has been able to prove its case against the appellants beyond shadow of reasonable doubt.

3. Heard arguments and perused the record.

4. No independent person was associated by the complainant to witness the arrest of the appellant and recovery of unlicensed pistol from him despite advance information, such omission on his part could not be over looked. Strange enough the appellant was waiting for the complainant to apprehend him, who admittedly reached there by consuming 45 minutes, even after receipt of spy information. In order to prove the safe custody of the pistol, the incharge of *Malkhanan* was to have been examined; his non-examination for no obvious reason could not be over looked. The pistol allegedly secured from the appellant has been subjected to forensic examination with delay of about six days to its recovery; such delay having not been explained plausibly could not be ignored. The appellant during course of his examination u/s 342 Cr.P.C has pleaded innocence; such plea on his part could not lost sight of in the circumstances of the 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 reasonable doubt and to such benefit, he is found entitled.

6. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Hon'ble 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 with which he was charged, tried, convicted and sentenced by learned trial Court; and shall be released forthwith, if not required to be detained in any other custody case.

8. The instant Criminal Appeal is disposed of accordingly.

J U D G E