

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl.Jail Appeal No.S - 09 of 2023.

Date	Order with signature of Judge
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Appellant: Shaukat Ali Mangnejo
Through Mr.Amir Ali Bhutto
Advocate.

Respondent. Through Mr.Aftab Ahmed
SharAddl.P.G.

Date of Hearing : 09thJune, 2023.

Date of Announcement : 23rd June, 2023.

JUDGMENT

AMJAD ALI BOHIO, J- Instant Criminal Jail Appeal has been filed against the judgment dated 07.01.2023, passed by the Court of the learned Additional Sessions Judge-I/(MCTC), Khairpur, in Sessions Case No.776/2021 arising out of Crime No.08/2021, registered at Police Station Gulo Siyal, for an offense under Section 23(1)(a) of the Sindh Arms Act, 2013.

2. According to the First Information Report (FIR), the complainant and their staff were on patrol when they received spy information at the Police Picket in Mangnejo that proclaimed offender namely Shaukat Ali Mangnejo, who was involved in Crime No.61/2013 at Police Station Sobhodero under Section 302 of the Pakistan Penal Code (PPC), Crime No.01/2020 at Police Station Phullu under Sections 302 and 427 of the PPC, and Crime No.10/2014 at

Police Station Gulo Siyal under Sections 324, 353, 395, 447, 448, and 149 of the PPC, was heading towards the bushes on the western side of his village. The complainant and their staff proceeded to the disclosed location and apprehended the appellant from whom unlicensed repeater and three cartridges of 12 bore were recovered which were sealed at place of arrest and recovery. Appellant was formally arrested and instant FIR was registered against him for the aforementioned offenses.

3. After the supply of documents as required under Section 265-C of the Code of Criminal Procedure (Cr.P.C), a formal charge was framed against appellant/accused to which he pleaded not guilty.

4. During trial, the prosecution examined SIP Allah Dino Odhano as Prosecution Witness 1 (P.W. 1), Complainant ASI Rab Nawaz as Prosecution Witness 2 (P.W. 2), and Mashir PC Mugeem Khan as Prosecution Witness 3 (P.W. 3).

5. After conclusion of recording of prosecution evidence, statement of appellant under Section 342 of the Code of Criminal Procedure (Cr.P.C) was recorded wherein he denied the prosecution evidence of being found in possession of an unlicensed repeater. However, he did not express his desire to examine himself on oath under Section 340(2) of the Cr.P.C, nor did he produce any evidence in his defense.

6. After hearing the arguments presented by the counsels of both parties, trial court through impugned judgment convicted the appellant/accused, which conviction and sentence is challenged before this Court.

7. I have considered the arguments and carefully reviewed the record in the case.

8. The learned counsel for the appellant argues that there are material contradictions among the testimonies of prosecution witnesses, which were overlooked by the trial court while recording conviction. He has argued that since the appellant has already been acquitted in the main case registered under section 302 of the Pakistan Penal Code (PPC), he is entitled to his acquittal, as established in the case of *Nizamuddin v. The State* (2022 P.Cr.L.J.Note.2). Additionally, he asserts that despite receiving advance information from a spy source about the appellant's presence at the place of the incident, the complainant party failed to associate independent individuals from the local community to ensure transparency in the recovery process. This omission, according to the appellant, constitutes a violation of section 103 of the Code of Criminal Procedure (Cr.P.C.). Furthermore, the investigating officer (I.O.) failed to demonstrate the proper custody of the weapon that was allegedly recovered from the accused until its delivery to the Ballistic Expert at the Forensic Lab in Larkana. Concluding his arguments, the learned counsel contends that the impugned judgment may be set aside. In support of these arguments, he has relied upon the case of *Samiullah v. The State* (2021 YLR 452).

9. The learned Additional Prosecutor General (APG) has supported the impugned judgment of the trial court and argued that the contradictions highlighted by the counsel for the appellant are insignificant. According to him, the testimonies of the complainant and witnesses regarding the recovery of an unlicensed repeater and three live cartridges of 12 bore remained consistent, reliable, and confidence inspiring. Therefore, he contends that the appeal lacks merit and may accordingly be dismissed.

10. On bare perusal of impugned judgment it is observed that trial court has acknowledged the contradictions and gaps in the prosecution evidence. However, these discrepancies were considered minor in nature and were disregarded. Upon careful examination of the evidence provided by the prosecution witnesses, I have observed following discrepancies and contradictions:

(a) The complainant, ASI Rab Nawaz, submitted entry of departure bearing No.07 at 1630 hours, indicating that he and the other police staff left Police Station Gulu Siyal for patrolling. However, it is to be noted that such entry states that they were traveling in a private vehicle, which contradicts the testimonies of the complainant and the mashir. They stated that they were on a motorbike. This contradiction regarding the mode of transportation used by the police staff is not a minor but falsifies either of two versions put forth by prosecution.

(b) Complainant during his evidence stated that they received spy information at Kharalabad curve. But, the mashir PC Muqeem Khan's contradicted this statement, as he deposed that they received spy information upon reaching Budh Mangneja. Such variations and disparity in their evidence regarding the location where the spy information was received raises doubts about the accuracy and consistency of their testimonies.

(c) In the complainant's testimony, it was mentioned that after checking vehicles at Kharalabad, they proceeded to Kharalabad curve where they stayed for 30 minutes before receiving the spy information. However, this

version was contradicted in the evidence deposed by mashir PC Muqem Khan, who stated that they went to Budh Mangneja from Kharalabad and received the information there. The lack of corroboration between their testimonies regarding the sequence of events and the location of receiving the spy information creates serious doubt shattering the very basis of happening of alleged incident.

(d) Furthermore, the complainant stated in his deposition that the distance between the place of information and the place of the incident is approximately 6 to 7 kilometers. In contradiction, mashir PC Muqem Khan deposed that such distance is only 1 kilometer. Such a significant discrepancy in their accounts raises doubts about the accuracy and reliability of their testimonies regarding the distance between the two locations. This inconsistency again shatters confidence on ocular account of evidence.

(e) Another point of contention arises from the conflicting statements as to who apprehended the appellant/accused. According to the complainant's testimony, PC Muqem Khan apprehended the appellant/accused. Conversely, PC Muqem Khan, in his deposition, stated that it was the complainant who first apprehended the appellant/accused. The conflicting statements regarding apprehension of the appellant/accused further speaks of reliability upon prosecution evidence.

(f) Regarding the non-association of private persons as mashir, the explanations provided by both the

complainant and mashir PC Muqeem Khan again are in conflict to each other. The complainant mentioned that they waited for 30 minutes to associate private persons as mashir, but nobody arrived. On the other hand, mashir PC Muqeem Khan stated that he was sent by the complainant to bring private persons, but he couldn't find anyone. The disparity in their accounts raises questions about the actual efforts made to associate private persons as mashir.

(g) Lastly, both the complainant and mashir deposed about PC Rajab writing the mashirnama (police memo). However, they contradicted each other on the manner of preparation. The complainant testified that he wrote the mashirnama while sitting on his bike, while the entry of departure does not mention that the police party left the Police Station on a motorbike. In contrast, mashir PC Muqeem Khan deposed that PC Rajab wrote the mashirnama while sitting on the ground. The inconsistency in their testimonies regarding the preparation of the mashirnama raises doubts about the accuracy and reliability of their statements.

11. It is settled principle of law that the burden of proof always lies upon the prosecution to establish its case beyond any reasonable doubt. Consequently, it appears that the trial court has failed to adequately consider the significant contradictions highlighted above specially between the evidence of the complainant and the mashir.

12. The highlighted contradictions coupled with negligence of the Investigating Officer in terms of proving safe custody of the parcels are significant and cannot be regarded as minor in nature. These contradictions carry greater importance in shattering the evidence of both PWs who were the witnesses of recovery process. The failure to associate private persons further creates doubt in accepting the contradictory prosecution evidence.

13. On perusal of the evidence of the Investigating Officer, who received the property after the FIR was registered on 03.09.2012, it was the Investigating Officer's responsibility to ensure the secure storage and prompt dispatch of the parcels. However, it appears that the complainant, ASI Rab Nawaz, assumed the responsibility of dispatching the property. In his examination-in-chief, he mentioned that he submitted the property through WHC Muhammad Azam Larik, using Register No.19 at Malkhana. However, it was not the duty of the complainant to do so, as his role was limited to delivering the property to the Investigating Officer/SIP Allah Dino after the registration of the FIR.

14. The report from the Incharge Forensic Science Laboratory, Forensic Division, Larkana, produced by the Investigating Officer as Ex.4/H, states that the parcels were received on 06.09.2021. Although the complainant testified that he dispatched the parcels, he failed to produce the entry of sending the parcel through dispatcher WHC Muhammad Azam Larik.

15. All above facts raise questions over the evidentiary value of the complainant and the Investigating Officer. The failure to produce the entry of departure of PC who took the parcel to laboratory further adds to the inconsistencies and gaps in the chain of custody of recovered weapon.

16. As a result, the prosecution has not effectively established the safe custody of the weapons allegedly recovered from the accused. Therefore reliance cannot be placed on such evidence. In this regard, the case of Kamal Din alias Kamala v. The State (2018 SCMR 577) is relied upon. The relevant observations from this case, in relation to the present matter, are as follows:

“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.”

18. Based on the above discussion, the impugned judgment dated 07.01.2023 passed by the trial court is set aside, and the appellant Shoukat Ali Mangnejo is acquitted of the charge. As the appellant is in custody, release writ shall be issued to the concerned Jail Superintendent with a directive to release the appellant/accused forthwith if he is not required in any other custody case.

JUDGE

