

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.02 of 2023

Appellant: Junaid through Mr. Javed Ahmed Rajput,
advocate

The State: Mr. Khadim Hussain Khuharo, Additional
Prosecutor General Sindh

Date of hearing: 08.08.2023

Date of judgment: 08.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that on arrest from the appellant was secured unlicensed pistol of 30 bore containing 05 live bullets of same bore by police party of Korangi Industrial Area Karachi, for that he was booked and reported upon. On conclusion of trial, he was convicted under Section 23(1) of Sindh Arms Ordinance, 2013 and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.100,000/- and in default in payment whereof to undergo simple imprisonment for two months with benefit of Section 382(b) Cr.P.C by learned Vth-Additional Sessions Karachi Central vide judgment dated 29.11.2022 which he has impugned before this Court by preferring the 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 the unlicensed pistol and bullets; there is no independent witness of the incident and evidences of PW being doubtful in its character has been believed by learned trial Court without lawful justification, therefore, the appellant is entitled to be acquitted by extending him benefit of doubt, even otherwise he was about to complete his jail term when was released on bail by this Court, which is opposed by learned Addl. PG for the State by contending that the prosecution has been able to prove its case against the appellant beyond of shadow of reasonable doubt.

3. Heard arguments and perused the record.

4. It was stated by complainant ASI Sohrab and PW /Mashir Shehryar that on the date of incident they with the rest of police personal were conducting patrol within jurisdiction of their police station when reached at PSO petrol pump, adjacent to Saba Cinema, they were approached by a person who intimated them that he was attempted to be robbed by culprits on two motorcycles, adjacent to 6B Mill Area. On such information, they proceeded to the pointed place without associating with them any independent person to witness the incident which appears to be surprising. At place of incident, as per them, they found the appellant and others to be available they were apprehended and from them were recovered unlicensed pistol and other belongings under memo. It is not appealing to common sense that the appellant and others were waiting at the place of incident to be apprehended by the police even after their failed attempt to commit robbery. Be that as it may, it was further stated by them that the appellant and others with recovery so made from them were taken to police station Korangi Industrial Area Karachi and were booked accordingly. The evidence of the complainant and PW/Mashir Shehryar on account of discussed omissions is not appearing to be transparent, confidence to be relied upon to maintain conviction. The further investigation of the case was conducted by I.O /SIP Syed Amjad Hussain as per him he recorded 161 Cr.PC statements of the PWs and dispatched the pistol recovered from the appellant to ballistic expert and after usual investigation submitted challan of the case. His evidence, if is believed to be true even then is not enough to improve the case of prosecution. Even otherwise, no question has been put to the appellant during course of his examination under Section 342 Cr.PC to have his explanation on report of ballistic expert, therefore, such report could not be used against him legally. The appellant has pleaded innocence. In these circumstances, it would be safe to conclude that 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.

5. In case of *Haji Nawaz vs. The State (2020 SCMR 687)*, it has been held by Apex Court that;

“The law is settled by now that if a piece of evidence or a circumstance is not put to an accused person at the time of recording his statement under section 342 Cr.P.C then the same cannot be considered against him for the purpose of recording his conviction.”

6. In the 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 by way of impugned judgment are set aside, consequently, he is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court; he is present in Court on bail, his bail bond is cancelled and surety is discharged.

8. The instant Criminal Appeal is disposed of accordingly.

JUDGE