

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.427 of 2019

Appellant: Salman through Mr. Liaquat Ali Hamid Meo,
advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 11.08.2023

Date of judgment: 11.08.2023

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 with magazine containing 02 live bullets of same bore by police party of PS Chakiwara which he allegedly used for committing murder of Irfan during course of robbery, for that booked and reported upon by the police. On conclusion of trial, he was convicted under Section 23(1)(a) of Sindh Arms Ordinance, 2013 and sentenced to undergo rigorous imprisonment for 14 years and to pay fine of Rs.10,000/- and in default in payment whereof to undergo simple imprisonment for 06 months with benefit of Section 382(b) Cr.P.C by Ist -Additional Sessions Judge (MCTC) Karachi South vide judgment dated 26.06.2019 which he has impugned before this Court by preferring the instant Crl. Appeal.

2. At the very outset, it is pointed by learned counsel for the appellant that when the case was about to be disposed of finally, learned trial Court declared the appellant as juvenile offender and charge against him was amended accordingly. After amendment of the charge, the evidence already recorded was adopted and the case was disposed of accordingly, which is against the principle of fair trial as envisaged under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. By pointing out so, he suggested for remand of the case for fair trial, which is not opposed by learned DDPP for the State.

3. Heard arguments and perused the record.

4. The omission pointed out by learned counsel for the appellant takes support from the record, same being incurable in terms of section 537 Cr. PC have occasioned in failure of justice, consequently the impugned judgment is set aside with direction to learned trial Court to record the evidence of the witnesses as per law, from the stage when the charge was amended against the appellant and then to make disposal of the case afresh and in accordance with law without being influenced by earlier finding; such exercise to be completed within 03 months.

5. The appellant was enjoying the concession of bail at trial, he to enjoy the same concession subject to furnishing fresh surety in sum of Rs.50,000/- and PR bond in the like amount to the satisfaction of the learned trial Court.

6. The instant Criminal Appeal is disposed of accordingly.

JUDGE