

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.383 of 2022

Appellant: Usman through M/s. Ali Zaman Khan Tanoli
and Muhammad Jawaid, advocates

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

Date of hearing: 06.09.2023

Date of judgment: 06.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellant was found in possession of unlicensed pistol of 9mm bore with magazine containing of 14 bullets of same bore, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to undergo rigorous imprisonment for 05 years and to pay fine of Rs.10,000/- and in default in payment whereof to undergo simple imprisonment for 01 month, with benefit of Section 382(b) Cr.P.C by learned XIIth -Assistant Sessions Judge Karachi West vide judgment dated 16.05.2022 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 licensed pistol of his brother Shahriyar; there is no independent witness to the incident and evidence of PWs being doubtful in its character has been believed by learned trial Court without assigning cogent reasons by learned trial Court, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned Addl. PG for the State by contending that the offence alleged against the appellant is affecting the society at large.

3. Heard arguments and perused the record.

4. It is stated by complainant ASI Shakeel Khan and PW/Mashir HC Saeed Ansari that on the date of incident they with the rest of police personal when were conducting patrol within jurisdiction of their police station they were intimated by 15 Maddadgar that a quarrel between two parties has taken place at Raees Amrohi Colony; on such information they went at the pointed place, there they were intimated that a person sitting in a Suzuki Vehicle is having a unlicensed weapon; on such information they went over to such vehicle, apprehended the appellant and recovered from him unlicensed pistol of 9mm bore with magazine containing of 14 bullets of same bore. It was secured under memo prepared at the spot. Its number under memo of recovery differs with one which was produced before the Court, which appears to be surprising. The complainant and his witnesses went at the place of incident on information yet they failed to associate with them any independent person which was essential to exclude the possibility of manipulation, such omission on their part could not be overlooked. It was stated by I.O/SIP Gul Faraz Khan that during course of investigation the appellant produced license for the pistol secured in the present case, which was issued by Deputy Commissioner, Jaffarabad, in favour of his brother Shahriyar. In that context, the contention of the learned counsel for the appellant that the brother of the appellant was sitting with him in Suzuki vehicle with a pistol secured, which was taken from him and then was foisted upon the appellant could not be lost sight of. Even otherwise, during course of his examination under Section 342 Cr.PC the appellant was asked to answer the question with regard to ownership of 30 bore pistol with 04 bullets, which has never been subject matter of the present case. 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 doubt and to such benefit he is found entitled.

5. 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".

6. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under 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.

7. The instant Criminal Appeal is disposed of accordingly.

JUDGE