

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Criminal Jail Appeal No. S-22 of 2023

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Appellant: Ashique Ali son of Nabi Bux by caste Kalhoro,  
through Mr. Riaz Ahmed Shaikh and Mr.  
Muhammad Ali Dayo Advocate

State through: Syed Sardar Ali Shah, Additional Prosecutor General  
Sindh

Date of hearing: **26.02.2024**  
Date of decision: **29.03.2024**

**J U D G M E N T**

**Zulfiqar Ali Sangi, J.-** The appellant/accused named above has preferred instant Jail Appeal through Superintendent Central Prison Sukkur, whereby he has impugned the judgment dated **04.01.2023** passed by Additional Sessions Judge-II Naushehro Feroze, District Naushehero Feroze, in Sessions Case No. 143/2019 (Re. The State v. Ashique Ali Kalhoro) arising out of FIR No. 27/2019 offence u/s 24 The Sindh Arms Act, 2013 registered at Police Station Bhiria City, District Naushehro Feroze, whereby he was convicted for the offence punishable U/S 24 of Sindh Arms Act, 2013 and sentenced to suffer RI for seven years. The appellant/accused also be liable to pay fine amount of Rs. 100,000/- (in words one lac only). In case of default of payment of fine the accused shall suffer SI for two years. The benefit of Section 382-B Cr.P.C was extended to the appellant/accused, hence he has preferred instant appeal.

2. Precisely, the case of prosecution as per FIR lodged by the complainant SIP Mansoor Ali Jatoi on 04.04.2019 are that he was investigating main murder case of appellant/accused Ashique Ali who was already arrested and under police custody. He took out the custody of appellant/accused Ashique Ali from police lock-up and started interrogation from him in presence of PC Muhammad Amen and PC Ghulam Rasool Dahri, during interrogation accused made his disclosure statement about the weapon used by him in the commission of main offence/crime while disclosed that the weapon of offence of main murder case/crime has been hidden by him in roots of hedge on southern side of his house and voluntarily ready to produce the same. Then SIP Mansoor Ali Jatoi, accompanied with his subordinate staff PC Muhammad Ameen, PC Ghulam Rasool, PC Rahib Hussain and Driver PC Zahid Hussain along with accused Ashique Kalhoro and left PS vide roznamcha entry No. 08 at 1230 hours towards pointed place in police mobile, when they reached at village Gaji Kalhoro/Zounki Kalhoro, where accused signaled them to stop police mobile and led them towards southern side of the hedge of his house and then produced weapon hidden by him from the roots of hedge and it was 1300 hours. The recovered pistol 30 bore and on which it was inscribed as MADE RIGHT MADE HERE CAL30MAUSHER MADE AS CHINA BY NORINCO. Pistol was unloaded and it was found containing two live bullets in its magazine. On

inquiry, appellant/accused disclosed that it was the same pistol, which was used by him while making fire shot committed murder of Habibullah Kalhoro. Due to non-availability of private mashirs, PC Muhammad Ameen and PC Ghulam Rasool were appointed as mashirs. Appellant/accused failed to produce valid license of the recovered weapon. The case property was sealed at the spot and such mashirnama was prepared in presence of mashirs. Thereafter, accused and recovered property was brought at PS where IO/SIP Mansoor Ali Jatoi lodged FIR against the accused on behalf of State.

3. On the conclusion of usual investigation, challan was submitted against the appellants/accused for offence U/S 24The Sindh Arms Act, 2013.

4. After completing legal formalities, the trial Court had framed charge against appellant/accused to which he pleaded not guilty and claimed to be tried.

5. In order to prove accusation against accused, the prosecution has examined in all 02 witnesses, they have produced certain documents and items in support of their evidence. **Thereafter**, the side of the prosecution was closed.

6. The appellant/accused was examined under section 342 Cr.PC, wherein he had denied the allegations leveled against him and pleaded his innocence. After hearing the parties and assessment of the evidence against the appellant/accused, the trial Court convicted and sentenced him as stated above, against the said conviction he has preferred instant appeal.

7. Learned counsel for appellant/accused contended that the appellant has falsely been implicated in the present case by the complainant/IO at the instance of complainant party of main murder case to strengthen the main murder case; that all the prosecution witnesses are police officials and no independent person has been associated to attest the proceedings; that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the trial Court which is insufficient to warrant conviction against the appellant/accused; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellant/accused; that the material contradictions appear in the statements of prosecution witnesses on crucial points, but those have not been taken into consideration by the learned trial Court while passing impugned judgment; that the judgment passed by the trial Court is perverse and liable to be set-aside. Lastly, he prayed that the appellant/accused may be acquitted by extending him benefit of doubt.

8. Conversely, learned Addl. P.G. appearing for the State opposed the appeal on the ground that prosecution has successfully proved its case against the appellant/accused beyond a reasonable doubt and all the witnesses have

fully implicated the appellant/accused in their evidence recorded by the trial Court; that all the necessary documents memos and FIR have been produced; that during the cross-examination the learned counsel had not shaken their evidence; that there are no major contradictions in the evidence of prosecution witnesses. Lastly, he submitted that appellant/accused was rightly convicted by the trial Court and prayed that appeal of appellant/accused may be dismissed.

9. I have heard learned counsel for the appellant/accused, learned Addl. P.G for the State and have examined the record carefully with their able assistance.

10. It is worthwhile to mention here that complainant/IO before his examination has expired due to his natural death. However, PW-02 WHC Nawab being well conversant with his signature was examined, who verified the signature of complainant/IO on basic documents i.e mashirnama of recovery and FIR. In case of seizure of weapon, recovery memo is a basic document which must be prepared by seizing officer at the time of affecting recovery, containing a list thereof, in presence of two or more respectable persons /witnesses and memo to be signed by such witnesses. The main object of preparing the recovery memo on the spot with the signature impression of witnesses is to ensure that the recovery is affected in presence of the marginal witnesses, honestly and fairly, so as to exclude the possibility of false implication and fabrication. Once the recovery memo is prepared, the next step for the prosecution is to produce the same before trial Court to prove the recovery of the material/article through the scribe and marginal witnesses. It has also come on record that the seizer memo was prepared on the spot in presence and under the signature of mashirs PC Muhammad Ameen and PC Ghulam Rasool. The witnesses have supported the case of prosecution from each of the corner and nothing left as ambiguous or contrary to disbelieve upon the prosecution story. The entire facts deposed by mashir PC Muhammad Ameen during his examination-in-chief upon all material points whereby corroborated the entire case of prosecution right from affecting of recovery from accused, preparation of memo recovery and his signature thereon has not been cross examined by learned counsel for accused, though chance was given. It is settled law that a particular fact deposed on oath has not been controverted /cross examined by opposite side, the same shall be deemed to be admitted/accepted by other side. The reliance is place on case of ***Ejaz Hussain and another vs. The State (2017 YLR Note 38)***. In another case of ***Muhammad Ramzan vs. The State (1996 P.Cr.L.J 1076) The Shariat Court (AJ&K)*** has specifically held as under: -

*(f) Qanun-e-Shahadat (10 of 1984)... Art. 132(2)... Cross examination... any portion of the statement of a witness not challenged during cross examination shall be deemed to be admitted.*

11. From the perusal of evidence it would be noticed that examined PW had brought the sufficient evidence against the accused to hold him responsible for possessing the unlicensed/without permit pistol, which he had used in the main crime bearing No.26/2019 u/s 302, 452, 109, 149 PPC registered with the same police station. Even otherwise, it is well settled that police witnesses are good witnesses like a private person and until and unless a grudge or previous enmity is established on record to falsely implicate the accused, their evidence cannot be discarded simply because of a reason that they are police officials. It may also further be clarified that in this part of the country, especially, in our areas of Sindh, where tribal system is prevalent, no body from the public is coming forward to act as a mashir or witness in any case, because they know very well about the repercussions of being witness against the accused. In case of **Noor Muhammad and others vs. The State (2012 P.Cr.L.J 1708)**, the Apex court has observed as under:-

*“It is observed that due to inter-se relation between inhabitant of the locality no one from the public comes forward to voluntarily join the recovery proceedings during investigation and to be a witness of recovery against the culprits of criminal mind”.*

12. Besides this, in case of **Bahadin v. The State (2014 P.Cr.L.J 579)**, the High Court of Sindh has been pleased to observe as under:-

*“Police officials are as good witnesses as any citizen unless any malafide is established against them. Deposition of Police Officials could not be brush aside singly on the bald allegation that they belonged to police department.”*

13. It appears that there was no major or serious contradiction in the depositions of witnesses available in the case file. On the contrary, from evaluation of evidence, if examined carefully, would lead to the conclusion that PWs had given a uniform version on almost all the basic facts of the case and they had fully corroborated to each other in the time line of events and the manner, in which, recovery of unlicensed weapon which used in the main murder case had taken place on the pointation of appellant/accused. In case of **Muhammad Ilyas v The State (2011 SCMR 460)** held as under:-

*“Contradictions which are not grave in nature can be ignored safely as minor contradictions creep in with passage of time. Merely on the basis of contradictions, statement of prosecution witness cannot be discarded if corroborated by other incriminating material”.*

14. It is well settled law that each case must be adjudged strictly in view of its own specific perspective and circumstances and Court should emphasis on the aspect that whether the evidence adduced by the prosecution is convincing a prudent mind or based on evil designed object or tainted with any kind of animosity to settle a personal vendetta. Even statement of a single witness is

sufficient to convict an offender, if it is trustworthy, confidence inspiring and free from ulterior motives. **In case of Muhammad Ali and others Vs. The State (1999 SCMR 1957)**, The Supreme Court had observed as under:-

*“Solitary statement of a witness, when appearing reliable and confidence inspiring is deemed sufficient for bringing home guilt of the accused”.*

15. The upshot of above discussion is that the prosecution has successfully established its case against the appellant/accused **Ashique Ali** through ocular account furnished by mashir, which is corroborated by the circumstantial evidence in shape of FSL report. Learned counsel for the appellant **Ashique Ali** has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in my humble view is based on appreciation of the evidence and the same does not call for any interference by this Court. Thus, the conviction awarded to the present appellant/accused **Ashique Ali** by learned trial Court in Sessions case No. 143/2019 Re-state vs. Ashique Ali vide judgment dated **04.01.2023** is hereby maintained and appeal of the appellant/accused **Ashqiuie Ali** is dismissed.

**J U D G E**