

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 424 of 2023

Appellant Muhammad Ali : through M/s. Shabana Sadiq & Shaista
son of Khadim Hussain Gul, Advocates

The State : Through Ms. Seema Zaidi, Addl.
Prosecutor General, Sindh.

Date of hearing : 01.10.2024

Date of Judgment : 01.10.2024

J U D G M E N T

Muhammad Saleem Jessar, J.- Through this appeal, Appellant has assailed Judgment dated 22.08.2023, handed down by learned Additional Sessions Judge-II, Karachi (South) in Sessions Case No.520/2023 (re: The State Vs. Muhammad Ali), being outcome of FIR No.1290/2022 registered at Police Station Preedy, Karachi, under Section 23(i)(a) of Sindh Arms Act, 2013, whereby he was convicted for the offence punishable under Section 23 (i) (a) of Sindh Arms Act 2013 and sentenced to undergo R.I. for three (3) years with fine of Rs.10,000/-. In case of default, appellant was directed to further undergo S.I for three months more However, the appellant was extended benefit of Section 382-B Cr. P.C.

2. The crux of the prosecution case are already mentioned in the FIR as well as impugned judgment, therefore, there is no need to reproduce the same.

3. A formal charge was framed against the accused vide Ex.02 to which he pleaded not guilty and claimed to be tried vide his plea Ex.2/A.

4. In order to prove its case, prosecution examined PW-1/mashir of arrest and recovery Muhammad Abdal at Ex.03, who produced photocopy of memo of arrest and recovery, PW-02/complainant SIP Mehmood Ahmed at Ex.04, who produce photocopy of entry No.52, FIR No.1290/2022, entry No.26, photocopy of memo of seizure of USB at Ex.4/A to Ex.04/D respectively, PW-03/I.O SIP Riaz Alam at Ex.05, who produced photocopy of entry No35 & 38, photocopy of entry No.11 & 35, photocopy entry No.95 & 63, photocopy of letter to FSL, photocopy of FSL report and photocopy of photograph of pistol at

Ex.05/A to 05/F respectively. Thereafter, learned DDPP closed the side of prosecution vide his Statement Ex.06

5. Statement of the accused was recorded under section 342 Cr. P.C. vide Ex.07 wherein he denied the prosecution allegations and claimed to be innocent. However, neither he examined himself on oath nor produced any witness in his defence.

6. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court vide impugned judgment convicted and sentenced the appellant / accused, as stated above. Against said judgment, the appellant has preferred instant appeal.

7. I have heard learned counsel for the appellant as well as learned Addl. P.G, Sindh appearing for the State and perused the material made available on the record.

8. Learned counsel for the appellant at the very outset submitted that instant case is offshoot of main crime i.e. F.I.R. No.1289 of 2022 registered with P.S. Preedy, Karachi for the offence punishable under Section 392 & 397 PPC vide Sessions Case No.519 of 2023 (re- The State Vs. Muhammad Ali). They further submitted, the appellant has been acquitted from the charge of main case vide Cr. Appeal No. 423 of 2023 and judgment dated 01.10.2024 passed by this Court. According to learned counsel, since instant case is offshoot of the main case, therefore appellant deserves to be acquitted from the charge of this case too.

9. Learned Addl. Prosecutor General has opposed the appeal on the ground that appellant has not shown any enmity or ill-will against the police officials.

10. Admittedly, instant case is the offshoot of main crime vide FIR No. 1289 of 2022 registered with P.S. Preedy, Karachi, for the offences punishable to Sections 392 & 397 PPC vide Sessions Case No.519 of 2023 (re- The State Vs. Muhammad Ali) in which he has already been acquitted of the charge by way of judgment dated 01.10.2024 passed by this Court vide Criminal Appeal No.423 of 2023. As far as, merits of the case are concerned, all the PWs are from police department; besides, a joint memo of recovery and arrest was handed down by the complainant which is an infirmity on the part of prosecution and creates doubts into veracity of the prosecution evidence. Since, there was same set of evidence in both cases and by disbelieving the same in main case, appellant has been acquitted of the charge by way of judgment dated 01.10.2024 passed by this Court; hence, appellant deserves his acquittal from the charge of instant case too, being offshoot of main crime/case.

11. It seems that the legal position in such a situation, as enunciated by the Superior Courts, is that when an accused has been acquitted from the charge of main case, he would be entitled to acquittal in a case which is offshoot of the main case. In this connection, reference may be made to the case of Yasir Chaudhry Vs. The State reported in **2012 MLD 1315**, wherein it was held by Honourable Lahore High Court as under;_

*“In the case reported as Manjhi v. The State (PLD 1996 Karachi 345) it has been held that when the accused has been acquitted in the main case, he would become entitled to acquittal in a case which is offshoot of the said case. Same is the position here, as the present lis is an offshoot of the main murder case, so, respectfully following the dictum laid down in the judgment supra, this petition is allowed and the application of the petitioner under section 249-A Cr. P.C. is accepted and the petitioner is **acquitted** from the charge in case F.I.R. No.17 of 2003 dated 12.1.2003 registered under section 7 of the Surrender of Illicit Arms Act No.XXI of 1991 with Police Station Civil Lines, Bahawalpur.”*

12. Keeping in view above legal position, it can safely be held that when the accused / appellant has been acquitted in the main case and instant case being offshoot of said main case, the appellant deserves to be acquitted in this case also.

13. As stated above, learned Addl. Prosecutor General also has not controverted this legal position and records her No Objection to the grant of instant appeal.

14. Accordingly, by a short order dated 01.10.2024, instant criminal appeal was allowed. Consequently, impugned judgment dated 22.08.2023, handed down by learned Additional Sessions Judge-II, Karachi (South) in Sessions Case No.520 of 2023 (re: The State Vs. Muhammad Ali), being outcome of FIR No.1290 of 2022 registered with Police Station Preedy, Karachi, for the offence punishable under Section 23(i)(a) of Sindh Arms Act, 2013, was set aside and appellant Muhammad Ali son of Khadim Hussain was acquitted of the charge. He was ordered to be released forthwith, as his custody was no longer required by jail authorities.

15. Above are the reasons for the short order.

JUDGE