

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

CrI.Jail Appeal No.S-69 of 2022

Appellant : Farooque s/o Shaban Jamali,
Through Mr. Muhammad Saad Saeed
Qureshi, advocate

The State : Through Ms. Rameshan Oad, Assistant
Prosecutor General.

Date of hearing: 30-09-2024

Date of decision: 11-10-2024

JUDGMENT

ZULFIQAR ALI SANGI, J. - Appellant was tried and convicted by the Model Criminal Trial Court-1 Hyderabad in Session Case No: 1201 of 2020, arising out of FIR No: 170 of 2020 registered at police station Qasimabad, Hyderabad for offence under section 25-A Sindh Arms Act and was sentenced to suffer R.I for four years and to pay fine of Rs:50000/=. In case of default in payment of fine he was ordered to suffer for two months more. The benefit of section 382-B Cr P C was also extended to the appellant.

2. The prosecution story, as depicted from the impugned judgment, is that the police party along with the complainant was searching the accused nominated in the murder of Wali Muhammad and during search when they reached at near Sehrish Nagar and arrested the appellant, recovered one TT pistol with eight live bullets and other articles. The pistol was sealed at spot coupled with preparation of mashirnama. After the investigation challan of the case was submitted. Thereafter by completing the formalities charge was framed against the appellant to which he pleaded not guilty and claimed to be tried.

3. The prosecution examined 04 witnesses in support of the case who while deposing against the appellant exhibited certain documents and the items in support of their evidence. The learned Prosecutor closed the side of prosecution. The statement of appellant was recorded in terms of Section 342 Cr.P.C., in which he denied the allegations of the prosecution leveled against him and claimed his

innocence and false implication in this case. However, neither he examined himself on oath nor led any sort of evidence in his defence.

4. After hearing the parties, the trial Court passed the impugned judgment dated 16-09-2022, thereby convicting and sentencing the appellant as stated above, who has preferred the instant criminal jail appeal.

5. Learned counsel for the appellant argued that the judgment of the trial Court is against the law, facts and equity and liable to be set-aside; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellant. He next argued that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the trial Court and the evidence is insufficient to warrant conviction of the appellant. He further added that no independent witness was examined and the witnesses examined at trial were interested and they contradicted each other on very material points; that the prosecution case is full of material contradictions and discrepancies. Learned counsel further contended that the impugned judgment suffers from mis-reading and non-reading of evidence. Lastly, he contended that defence has created so many doubts in the prosecution case and benefit of which may be extended in favour of the appellant by setting-aside the impugned judgment and ordering acquittal of the appellant.

6. On the other hand learned APG opposed the appeal and contended that the evidence produced at trial is natural and confidence inspiring; that the F.I.R is promptly lodged and name of the appellant was mentioned in the F.I.R; that the appellant was apprehended by police party on the spot along with crime weapon and its FSL report is in positive. She further argued that the defence has failed to create dents in the prosecution case. No important material contradictions and discrepancies have been pointed out by the defence counsel. She further contended that prosecution has established its case beyond any shadow of doubt against the appellant and learned trial Court has rightly convicted the appellant. Lastly, she prayed for dismissal of the appeal.

7. I have heard learned counsel for appellant and learned A.P.G, and perused the material available on record with their able assistance.

8. I have also scrutinized the evidence of all the prosecution witnesses carefully. Complainant SIP Saif-ur-Rehman who is also the investigation officer deposed that on 07.09.2020 he was conducting the investigation of FIR No: 135/2020 registered under section 302 PPC in respect of murder of deceased Wali Muhammad. On the same day while receiving information from complainant about the availability of appellant reached at pointed place along with the staff and the complainant and arrested the appellant and on his search recovered one TT pistol having eight live bullets. The pistol was sealed at spot and the mashirnama was prepared which was attested by the private witnesses. His evidence is supported by the mashir PW-1 who is the private person and both witnesses produced relevant documents during their evidence. They were cross-examined at some length but defence counsel failed to bring on record any material favourable to the appellant.

9. On re-assessment of the evidence, I, find that the prosecution has proved the charge against appellant beyond reasonable shadow of doubt, for the reasons that F.I.R was lodged promptly; an unlicensed T.T pistol along with eight live bullets were recovered and were sealed at the spot. The evidence of complainant is corroborated on all material aspects by PW-1/ eyewitness and the mashir Ghullam Sarwer. The crime weapon was recovered from the appellant on the spot at the time of his arrest and FSL report in respect of such weapon is in positive. There appear no major contradictions in the evidence of the prosecution witnesses. However, the learned counsel for appellant pointed out some minor contradictions in the evidence of above witnesses. In this context, it is observed that minor contradictions / omissions in the evidence of eye witnesses are natural phenomena and no importance can be attached to such minor contradictions. It is also well settled law that minor contradictions, which do not affect the materiality of the evidence can be ignored. The reliance in this regard is placed on case of *Zakir Khan v. State* reported in **1995 SCMR 1793**.

10. Worth to observe that the police witnesses are as good and reliable as another witness, provided that no enmity exists between them and the accused. In this case no enmity has been suggested against any of police witnesses; as such the police had no reason to falsely implicate the appellant in a false case. The appellant has not even alleged any enmity against police witnesses in his statement recorded under Section 342 Cr.P.C.

11. Thus, for the reasons discussed above, I find that the prosecution has proved its case against the appellant beyond a reasonable shadow of doubt in respect of the above offences for which he was convicted and sentenced vide impugned judgment. As such, the appeal fails and consequently stands **dismissed**.

JUDGE