

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.S-129 of 2019

Appellant Mushtaque Jakhrani, through Mr. Mujahid Ali Jatoi,
Advocate.

Respondent The State, through Mr. Ali Anwar Kandhro, Additional
Prosecutor General.

Date of hearing : 20.03.2020.

Date of decision : 20.03.2020.

J U D G M E N T.

ZAFAR AHMED RAJPUT, J.- Impugned in this criminal jail appeal is the judgment dated 21.11.2019, passed in Sessions Case No.286 of 2018 (Re: The State Vs. Mushtaque Jakhrani), arisen out of Crime No.47/2018,, registered at Police Station Mouladad, under Section 23(1)(a) and 25 of Sindh Arms Act, 2013, whereby the learned Additional Sessions Judge-II, Jacobabad, convicted the appellant and sentenced him to undergo R.I. for three (03) years and to pay fine of Rs.20,000/- (Rupees Twenty thousand), in default thereof to suffer S.I. for three months more. However, benefit of Section 382-B, Cr.P.C was awarded to the appellant.

2. Facts in brief of the prosecution case are that, on 20.07.2018, at 1830 hours, complainant ASI Mohammad Saifal Jakhro lodged aforesaid FIR, alleging therein that on the said date i.e. 20.07.2018 he left police station vide entry No.8/1600 ours along with PC Akhtar Ali, PC Shah Zaman in police mobile driven by driver HC Jamsher Ali for patrolling and when reached Ghaffar Curve, he received spy information that required accused Mushtaque Jakhrani in FIR

No.45/2018, registered under Sections 302, 311, PPC was standing at Nawazo Jagir, hence they proceeded to the indicated place, where they found one person standing who tried to slip away, but was apprehended by the police. On his personal search, one T.T. Pistol loaded with four live bullets of 30-bore in its magazine was recovered. On enquiry said person disclosed his name as Mushtaque Jakhrani. The T.T. Pistol was found unlicensed and the accused further disclosed that it was same pistol which he had used in committing murder of Mst. Mehar Khatoon.

3. After usual investigation police, the appellant/accused was sent up to face trial.

4. A formal charge was framed against the appellant/accused, to which he pleaded 'not guilty' and claimed to be tried.

5. At trial, the prosecution examined PW-1 PC Akhtiar Ali at Ex.4, who produced memo of arrest and recovery at Ex.4-A; PW-2 complainant ASI Mohammad Saifal at Ex.5, who produced copy of FIR at Ex.5-A and copy of roznamcha entry No.8 at Ex.5-B and then the side of prosecution was closed.

6. The accused in his statement recorded u/s 342, Cr.P.C, denied the allegations, pleaded innocence and claimed to have been falsely implicated in this case. He, however, neither examined himself on oath in terms of Section 340(2), Cr.P.C, nor led any evidence in his defence.

7. The learned trial Court after hearing the parties, handed down the impugned judgment thereby convicting and sentencing the appellant, as mentioned above. The appellant has filed instant criminal appeal to challenge the said judgment.

8. Learned Counsel for the appellant has contended that the appellant has already been acquitted of the charge in the main murder case viz. Sessions Case No.285 of 2018, arisen out of Crime No.45/2018 of P.S Mouladad. He further contended that that the appellant is in jail from the date of his arrest i.e. 21.07.2018 and out of the sentence of three years awarded to him by the learned trial Court, he has served out 02 years and 03 months including remissions, thereby he has sufficiently been punished, therefore, if the sentence of appellant is reduced to already undergone, he would not press this appeal on merits.

9. Learned Additional Prosecutor General has conceded to the request made by learned Counsel for the appellant.

10. The appellant has already been acquitted in the main case being Sessions Case No.285/2019, arisen out of Crime No.45/2018 registered at Police Station Mouladad, under Sections 302, 311, PPC vide judgment dated 15.02.2020, certified copy whereof has been placed on record. There is no previous record of the appellant of having been convicted in any offence/crime. From perusal of the record, it appears that the appellant was awarded sentence of imprisonment for three years. The contention of learned Counsel that the appellant after his arrest on 20.07.2018 is continuously in jail is borne out from the jail roll dated 20.03.2020 furnished by the Senior Superintendent, Central Prison & Correctional Facility, Larkana, which clearly indicates that the appellant has served the sentence of 01 year and 07 months excluding remissions and has earned remissions for 07 months upto 20.03.2020, thereby he has served the total sentence of 02 years and 03 months till date.

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11. Accordingly, while maintaining the conviction awarded to the appellant by the learned trial Court, instant appeal is dismissed; however, the sentence awarded to the appellant is modified and reduced to the period, which he has already undergone. The sentence of fine is also remitted. The appellant, who is confined in jail, shall be released immediately if he is not required to be detained in any other case. D

Qazi Tahir PA*