

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.S-21 of 2024

Appellant : Inam Ali Jatoi,
Through Mr. Abdul Rehman A. Bhutto, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing : 04.02.2025.

Date of Judgment : 04.02.2025.

J U D G M E N T .

Khalid Hussain Shahani, J.- Through this criminal appeal, appellant Inam Ali son of Din Muhammad Jatoi has challenged the judgment dated 14.03.2024, passed by learned III-Additional Sessions Judge, Shikarpur, in Sessions Case No.85 of 2023, re-The State v. Inam Ali Jatoi, whereby the appellant having been found guilty of the charge was convicted for offence under Section 23(i) A and 25 of Sindh Arms Act, 2013 sentenced for the period which he had already undergone and to pay fine of Rs.100/- (Rupees one hundred only), in case of default in payment of fine to undergo simple imprisonment for 01 day more.

2. Briefly, the facts of the prosecution case are that on 03.02.2023, a police posse of PS Madeji, District Shikarpur, led by complainant SIP Zakir Hussain Abro, whilst patrol apprehended the appellant/accused Inam Ali Jatoi at 1500 hours, near the link road leading to village Faizai Kalhora situated on the Sukkur-Larkana main road and recovered an unlicensed T.T. Pistol of 30-bore with magazine containing 02 live bullets from his possession. After completing requisite formalities at the spot, the appellant and recovered property were taken to police station, where FIR of this case was registered.

3. The appellant pleaded 'not guilty' to the charge and claimed to be tried. To substantiate its case, the prosecution examined and relied upon the evidence of in all three PWs i.e. two private mashirs namely Tarique Hussain and Husnain Ali and complainant SIP Zakir Hussain Abro, who has also acted as the investigating officer of the case. They exhibited the relevant documents.



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Handwritten signature/initials

The trial Court, on the basis of evidence of these witnesses held the appellant guilty of the charge and sentenced him, as stated above.

4. The learned Counsel for the appellant has mainly contended that the two private mashirs of recovery, namely, Tarique Hussain Jatoi and Husnain Jatoi did not support the prosecution case and despite having been declared hostile cross-examined by the prosecution, they stood firm to the stance taken by them in the depositions that the weapon was not recovered from the appellant by the police in their presence and only their signatures were obtained by the police at the police station on white papers. He further contended that this case is the offshoot of main case based on Crime No.6/2024 of PS Madeji, for offence u/s 324, 337-F(iii), 114, 34, PPC and in that case too the appellant and co-accused have been acquitted of the charge by the trial Court vide judgment dated 10.2.2024; in support, he has placed on record certified copy of the judgment.

5. Learned Deputy Prosecutor General was unable to support the impugned judgment and contended that in view of the evidence of two private mashirs and the acquittal of the appellant in the main case, he has no objection if the appellant is acquitted of the charge in this case as well.

6. From the perusal of evidence of complainant ASI Zakir Hussain Abro it appears that on the day of incident i.e. 03.2.2023, he along with his staff as well as private witnesses Tarique Hussain and Husnain Ali had proceeded from the police station in connection with investigation of the main case bearing Crime No.6/2024, u/s 324, 114, 148, PPC, during which he apprehended the appellant and effected the alleged recovery in presence of above-named private witnesses/mashirs. However, at trial, both the private mashirs, namely, Tarique Hussain and Husnain Ali Jatoi did not support the prosecution case. They with one voice deposed that they did not know about the incident; the weapon was not recovered from present accused by police in their presence. Police only obtained their signatures at PS on some white papers. They specifically stated that the accused present in Court was innocent and falsely implicated by the police. Both these witnesses/mashirs were declared hostile; however, in cross-examination by the prosecution they both stood firm to the above statements recorded by them. The trial Court appears to have convicted the appellant on the sole unsupported evidence of recovery officer complainant ASI Zakir Hussain Abro, who has also acted as an I.O. of the case; such fact is fatal for the prosecution. In view of the above statements of two private witnesses being mashirs of alleged recovery, reasonable doubt was created in the prosecution case and the



4/2

appellant/accused was entitled to the benefit thereof. Reliance can be placed on the case reported as *Tariq Parvez v. The State*, (1995 S C M R 1345), wherein the Hon'ble Supreme Court held as under :-

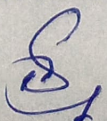
"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

7. As observed above, this is the offshoot case of main case vide Crime No.6/2024 of PS Madeji, u/s 324, 114, 148, PPC, wherein the appellant has already been acquitted of the charge; hence, propriety of law demands that he should also be acquitted in the instant case as well. 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 the 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."*

8. For what has been discussed above, instant Criminal Appeal is allowed, the impugned judgment dated 14.03.2024 passed by the learned trial Court is set aside and the appellant is acquitted of the charge. According to the jail roll of the appellant dated 21.05.2024, furnished by the Superintendent/Officer Incharge, District Prison & Correctional Facility, Shikarpur, he had been released from jail on 15.03.2023.

Certified to be True Copy


HC Assistant Registrar

Sd/-
(Khalid Hussain Shahani)
Judge

