

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No. S- 100 of 2024.

Appellant. : Ghulam Abbas Menik
Through Mr. Safdar Ali Bhutto, Advocate.
Respondent : The State through Mr. Nazir Ahmed Bhangwar,
D.P.G.
Date of hearing : 10.3.2025.
Date of Judgment : 21.3.2025.

J U D G M E N T

KHALID HUSSAIN SHAHANI J.- By this criminal appeal, appellant Ghulam Abbass has challenged the judgment dated 28.11.2024, passed by the learned Sessions Judge, Kashmore @ Kandhkot, in Sessions Case No.496 of 2023 re(State v. Ghulam Abbas) arisen out of Crime No.289 of 2024 of P.S A-Section Kandhkot, offence under Section 23(i)(a) of Sindh Arms Act, 2013, whereby he has been convicted and sentenced to suffer R.I for 3 years and pay fine of Rs.40,000/=. In case of default, he shall suffer S.I for six months more. Benefit of section 382 B Cr.P.C is extended to the appellant.

02. Briefly, facts of prosecution case as unfolded in FIR are that on 15-11-2023, police party headed by HC Abdul Wahab, at about 09:00 p.m apprehended appellant from Dua Chowk, Kandhkot and recovered a T.T pistol along with 03 live bullets. Consequent upon; case was registered inter alia on above facts.

03. At trial, the appellant pleaded not guilty. To substantiate its case prosecution examined five witnesses, including HC Abdul Wahab (complainant), PC Muhammad Tayab (mashir), ASI Abdul Faheem (investigating officer), WHC Ghulam Pinjal (Malkhana Incharge), PC Barkat Ali Lashari (Dispatch Rider). In statement u/s 342 Cr.P.C, appellant denied wrong doing.

04. Learned counsel for the appellant argued; the case is false and fabricated; the appellant is victim of the police; though venue of occurrence is situated in heart of the city, yet no private person associated in sheer violation of the mandatory provisions of section 103 Cr.P.C; both mashirs are subordinate to the complainant, hence highly interested, setup

and hostile; the evidence of prosecution witnesses is contradictory on material points and lacks independent corroboration; and trial court has failed to appreciate that prosecution failed to prove safe custody and safe transmission of the weapons for the FSL, hence the sentence passed was not sustainable.

05. On the other hand, learned Deputy Prosecutor General Sindh supported the impugned judgment; however, reluctantly agreed that no private person was associated, though venue of occurrence is thoroughfare place.

06. According to prosecution, the appellant was arrested from Dua Chowk near Degree college Kandhkot, at about 2100 hours, a busy place situated in the heart of city. Neither independent witness has been cited, nor any sort of effort made in this respect to corroborate the recovery of weapon from the appellant. Therefore, there is sheer violation of the mandatory provisions of section 103 Cr.P.C. Glaring discrepancy has been observed in the testimony of the complainant and mashir. The complainant HC Abdul Wahab testified the memo of arrest and seizure was prepared by PC Muhammad Tayab. Contradicting such piece of evidence PC Muhammad Tayab deposed, it was prepared by the complainant. Means thereby, it remained mystery, as to who was author of such an important document being backbone of the case. Such alone fact has made the recovery proceedings doubtful.

07. Prosecution has even failed to prove the safe custody of the weapons and safe transmission to the forensic laboratory. WHC Ghulam Panjal, Incharge Malkhan testified, he received case property viz. T.T pistol and 3 live bullets on the same day and kept entry No.127 at 2330 hours, which is time of arrival at PS and registration of the FIR. He further testified, said entry did not find place signature of I.O Abdul Fahim. Means thereby, before registration of the FIR, the investigation officer was appointed and kept the property in Malkhana. Besides, departure and arrival entries not show the signature of the complainant or any of the witness to corroborate such evidence. The complainant and witnesses furnished conflicting versions regarding the sequence of event. Both the mashirs of arrest and seizure being police personnel and subordinate to complainant are interested and partisan; their testimony cannot be taken as gospel truth in absence of any other strong corroboration by independent evidence including circumstantial evidence, which is lacking in the present case. It is also crucial to note that same set of police personnel have acted as mashirs in other two crimes of same police station into incidents recorded on

different dates, but against almost same set of accused, who have been acquitted by this Court. On these scores, the prosecution story suffers from material doubts and it cannot be excluded beyond consideration that it was only a paper work by concocting a false prosecution story to show their so called performance to their high ups; thus, prosecution has failed to establish the guilt of appellant beyond shadow of a reasonable doubt. It is a settled principle of criminal law that even if a single doubt arises into the prosecution case; its benefit must go to the accused.

08. Given the above, the prosecution has failed to prove its case beyond shadow of reasonable doubt, hence the appellant deserves its benefit. Consequently, appeal is allowed. The conviction and sentences awarded to the appellant by the learned trial court vide judgment dated 28.11.2024 is set aside. The appellant is acquitted of the charge. He shall be released forthwith if not required in any other case.

JUDGE

Asghar Altaf/P.A