

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Jail Appeal No. S-30 of 2020

Appellant Nadir son of Adam Laar : Through Mr. Ashique Hussain Kalhoro, Advocate.

The State : Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.

Date of hearing : 26.05.2025

Date of Judgment : 26.05.2025

J U D G M E N T

Muhammad Saleem Jessar, J.- Through instant criminal jail appeal, the appellant has called in question the Judgment dated 19.02.2020 (impugned judgment) penned down by learned First Additional Sessions Judge/MCTC, Kamber, vide Sessions Case No.354 / 2018 (re: State Vs. Nadir Laar). The case is outcome of Crime No.38/2018, registered at P.S Gaji Khuhawar, for offence under Section 24 of Sindh Arms Act, 2013. After recording evidence and determination of points, the trial Court held the appellant guilty of charge u/s 24, Sindh Arms Act, 2013, hence, convicted and sentenced him to undergo R.I. for 03(three) years, and to pay fine of Rs.200,000/-. In case of default, the appellant was directed to undergo S.I. for six months more. However, benefit of Section 382-B, Cr.P.C was extended to the appellant/ convict.

2. According to the case of prosecution, on 18.09.2018, a police party headed by SIP Abdul Rasheed Korkani of PS Gaji Khuhawar having left their police station in connection with investigation of FIR vide Crime No.37/2018 of PS Gaji Khuhawar, u/s 302, 148, 149, PPC, on a tip-off, apprehended appellant Nadir Laar, being a nominated accused in the said crime, at 1700 hours from near Bago Sim Shakh Bridge on Khuhawar-Mehar Road and in presence of private mashirs Muhammad Salih and Abdul Jabbar, both by caste

Laar, who were allegedly called by complainant after receipt of spy information, recovered an unlicensed T.T. Pistol loaded with magazine containing two live bullets of 30-bore, which was sealed on the spot. The memo of arrest and recovery was prepared and then the appellant as well as case property were brought at P.S where instant case was registered against him on behalf of the State.

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

4. In order to prove its charge, the prosecution examined and relied upon evidence of in all five witnesses i.e. mashir Muhammad Salih Laar and complainant, author and IO SIP Abdul Rasheed Korkani. They exhibited relevant documents in their evidence.

5. In his statement u/s 342, Cr.P.C, the appellant/accused denied the prosecution case and claimed to be innocent and implicated at the behest of complainant of main case vide Crime No.37/2018. 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. Learned counsel for the appellant submitted that the offensive weapon was foisted upon the appellant at the behest of complainant of main case Crime No.73/2018. He further submitted that per FIR of the main case, the appellant was shown armed with Kalashnikov; whereas, the recovery shown from him is a T.T. Pistol, which has no nexus with the main case. He contended that though per prosecution case the weapon was sealed and sent to the ballistics expert for examination; however, the prosecution failed to produce the relevant entries during trial and even the dispatch official through whom the weapon was sent for examination and report was not examined at trial, therefore, the prosecution failed to prove safe custody as well as safe transmission of the offensive weapon to the expert. He lastly contended that there are numerous contradictions and inconsistencies in the

evidence of witnesses examined by the prosecution at trial, therefore, the appellant is entitled to be acquitted.

8. Learned Addl. Prosecutor General supported the impugned judgment and contended that the prosecution by adducing trustworthy and confidence inspiring evidence as well as positive ballistics expert report has proved the case against the appellant, therefore, the appeal in hand is without merit and is therefore, liable to be dismissed.

9. I have heard learned Counsel for the appellant as well as learned Addl. P.G for the State and perused the material made available on the record.

10. From perusal of the record it appears that the police party headed by complainant SIP Abdul Rasheed Korkani claimed to have left the police station under roznamcha entry No.11, at 1600 hours of 18.9.2018; however, at trial the complainant failed to produce departure or arrival entries to substantiate his plea that he had actually left the police station on the relevant date and time. Moreover, per claim of complainant, the case property was kept by him in safe custody in Malkhana of P.S and recorded such entry in the relevant Register; however, he failed to produce on record such entry during the trial. His further claim was that after getting permission he sent the parcels containing case property to the FSL Laboratory Larkana; however, neither he disclosed the dispatch official nor any one was examined at the trial.

11. The daily diary entry through which the police allegedly had left P.S for the purpose mentioned under the FIR was not produced in evidence at the time of trial. Non-production of such vital document by the I.O at the time of trial, shows they had not left the police station for the purpose mentioned under the memo of recovery and arrest as well as the FIR; hence, either the offence as alleged had not occurred or the police completed/prepared all the formalities at police station only to strengthen the rope of main case.

12. The contention raised by learned defense counsel that per averments of the main FIR, the appellant allegedly was shown to have had a Kalashnikov which allegedly was used by him; however, at the time of trial, the police have shown a pistol to have been recovered/produced from/by him and then it was treated to be an offshoot of said main crime. Suffice it to say, the trial Court did not bother to discuss this essential aspect of the case while

awarding conviction to appellant neither the prosecution justified their claim in this regard. If the contents of FIR may be presumed to be true that the appellant was found in possession of an unlicensed pistol which obviously is a cognizable offence, yet the weapon allegedly shown to have been recovered from his possession was not the weapon through which he allegedly had committed murder of the deceased in main case. Hence, instant case should not be termed as an offshoot of main crime.

13. Apart from above, the complainant SIP Abdul Rasheed admitted in cross-examination that the mashirs, who were related to the complainant of murder case, were arranged by said complainant and further that both private mashirs were picked up by him from the way while going to bridge of Bago Sim Shakh on Gaji Khuhawar-Mehar Road. In this context, the mashir Muhammad Salih stated in his examination-in-chief that he and co-mashir Abdul Jabbar were standing near bridge of Bago Sim Shakh on Gaji-Khuhawar-Mehar Road (place of recovery).

14. It appears that the trial Court has not properly appreciated entire material and not applied judicious mind to evaluate/appreciate facts and circumstances of case in hand. In such circumstances, in absence of departure and arrival entries as well as the entries relating to keeping of offensive weapon in the safe custody and its dispatch to the FSL Laboratory, coupled with non-examination of the dispatch official, if any, at trial, makes the very recovery of offensive weapon doubtful. In view of above, I have no hesitation to hold that there are several circumstances/infirmities in the prosecution case as discussed above, which have created reasonable doubt about the guilt of appellant. By now it is settled law that for giving benefit of doubt to an accused, 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 of same not as a matter of grace or concession but as a matter of right. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), the Hon'ble Supreme Court has observed as follows:-

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates

reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."

15. For what has been discussed hereinabove, instant Criminal Jail Appeal was allowed by a short order passed on 26.05.2025, whereby the impugned judgment dated 19.02.2020, handed down by learned First Additional Sessions Judge/MCTC, Kamber, vide Sessions Case No.354 of 2018 (re: State Vs. Nadir Laar) was set aside and the appellant was acquitted of the charge. Above are the detailed reasons for said short order.

JUDGE

Larkana
Dated. 26.05.2025
Approved for Reporting

Qazi Tahir PA*