

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No S-107 of 2019
Cr. Jail Appeal No S-108 of 2019

Appellant in Cr. Jail Appeal No.S-107/2019. Khan Mohammad Chandio.

Appellant in Cr. Jail Appeal No S-108/2019. Moutbar Chandio.

Respondent The State

Mr. Riaz Hussain Khoso, advocate for the appellants in both appeals
Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing: 28.05.2021.
Date of Decision: 4.06.2021.
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J U D G M E N T

Omar Sial –J. Both appellants i.e. Khan Mohamamd Chandio and Moutabar Chandio were amongst 7 persons who were convicted under section 302(b), P.P.C. and sentenced to life imprisonment as well as directed to pay a fine of Rs.500,000/- (or spend another 6 months in prison in default of the payment) by a judgment dated 30-10-2019 passed by the learned 1st Additional Sessions Judge, Shahdadkot. They were convicted for the murder of Mehboob Ali in a case arising out of F.I.R. No.47 of 2013 registered at the Behram Police Station. The murder was said to have taken place on 16-9-2013. On 24-9-2013 both the appellants who were the accused in F.I.R. No.47 of 2013 were arrested by the police. Khan Mohammad was arrested while he was in possession of a double barrel gun with 5 live cartridges, whereas Moutabar Chandio was arrested while he was in possession of a single barrel gun with 8 live cartridges. F.I.R. No.50 of 2021 under section 23(1)(a) of the Sindh Arms Act, 2013 was registered against Khan Mohammad, whereas F.I.R. No 51 of 2021 under the same section of the law was registered against Moutbar Chandio.

2. Vide judgment dated 30-10-2019, the accused of F.I.R. No.47 of 2013 were all found guilty for the murder of Mehboob Ali, whereas vide 2 similar judgments of even date, the appellants in these appeals were also found guilty

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of possessing un-licensed weapons. They were accordingly sentenced to 7 years imprisonment as well as pay a fine of Rs.20,000/- each or remain in prison for a further period of 6 months in default of payment. It is these 2 judgments of the learned 1st Additional Sessions Judge, Shahdaddkot which have been impugned in these proceedings. Both appeals arise from the same main case and the witnesses and their testimonies are identical. I will, therefore, dispose of both appeals with this common judgment.

3. In order to prove its case, the prosecution examined 2 witnesses. PW-1 Muhammad Malook was the witness to the arrest and recovery of the 2 accused. PW-2 S.I. Mukhtiar Ali was the complainant as well as the investigating officer in both the cases. Both accused pleaded innocence and false implication in their respective section 342, Cr.P.C. statements.


4. I have heard the learned counsel for the appellants as well as the learned D.P.G. My observation and findings are as follows.

5. The only witness to the arrest and recovery examined i.e. Muhammad Malook testified that he was standing 10-15 feet away when the complainant seized the arms and ammunition and therefore he could not give any specifics of the cartridges seized. He also testified that it was only the cartridges that were sealed by the complainant before him and not the guns. The ballistic report reflects that the number 350 was printed on the single barrel gun. No such number is mentioned on the memo of recovery. Malook further testified that when the accused were arrested their hands were tied with a handkerchief. To the contrary, the complainant recorded that he had handcuffed the appellants when they were arrested. The evidence recorded further reveals that the complainant in his role as investigating officer did not bother to conduct any investigation in the matter. He merely arrested the accused and caught hold of Malook to act as witness. The complainant's malafide is also reflected in the fact that while he admitted that there were many people available at the spot where the arrest and recovery had taken place, he did not even ask any one of them to act as a witness. It appears from the testimony of Malook that the witnesses were arranged by the complainant, who subsequently went to drop them off to their village. Malook recorded that it was 6:00 p.m. when he was informed over the telephone by one Manzoor Ali that he should go to where the appellants were situated. The appellants were then subsequently arrested. To the contrary, the memo of arrest and recovery shows the arrest and recovery having taken place at 7:00 a.m.

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6. Doubt is created as to the mode, manner and time of arrest as well as whether the weapons seized were actually the same as those sent for analysis and then subsequently produced at trial. Doubt is enhanced when the witness testified that the weapons were not sealed before him. Such doubt reflects of the bonafide of the complainant of the case, who also acted as the investigating officer, though he did not conduct an iota of investigation. Evidence reveals that such an investigation was carried out to the prejudice of the appellants. The weapons were sent for analysis 10 days later and no account was given as to their safe keeping in the interim. It also appears that the legal heirs of the deceased in the main case i.e. the one arising out of 47 of 2013 have compounded the offence of murder with the appellants and that the appellants have been acquitted pursuant to section 345(6), Cr.P.C.

7. In view of the above, the appeals are allowed and the appellants acquitted of the charge. They may be released forthwith if not required in any other custody case.

 4/6/21
JUDGE