

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Cr. Appeal No. 139/2016

Ayaz Khan

V

The State

Date of hearing	14.06.2017
Date of judgment	16.06.2017
Appellant	Through Mr. Sikandar Khan, advocate
The State	Through Mr. Zafar Ahmed Khan, Addl. P. G.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- This appeal is directed against the judgment dated 10.03.2016 passed by learned IV-Additional Sessions Judge, Karachi West, in Sessions Case No.2049/2014 (Ayaz Khan v. The State) arising out of Crime No.300/2014 registered at Police Station Jackson under section 23(i)-A SAA, 2013 whereby the appellant Ayaz Khan has been convicted and sentenced to suffer RI for 01 year and to pay the fine of Rs. 5,000/-. In case of default in payment of fine he was ordered to suffer simple imprisonment for 01 month more (the impugned judgment). Benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 08.08.2014 at about 2245 hours the appellant was apprehended by police from Umer Khan Road, near Qainchi Gulshan Sikandarabad, Keamari, Karachi, by ASIP Ghulam Nabi in suspicious condition and during personal search an unlicensed 30-bore pistol without number alongwith 04 live bullets were

recovered from his possession, hence the Complainant ASI Ghulam Nabi lodged the aforesaid FIR against him under section 23(i)-A SAA, 2013.

3. During investigation, Investigation Officer recorded 161 Cr.P.C. statements of the P.Ws. Recovered pistol and bullets were sent to FSL and positive report was received (Ex.5/A). On the conclusion of investigation challan was submitted against the accused for offence u/s 23(i)-A SAA, 2013.

4. Trial court framed charge against accused at Ex.2 to which, accused pleaded not guilty and claimed to be tried vide Ex.8. At the trial prosecution examined PW-1 ASIP Ghulam Nabi at Ex.3, who produced photocopy of memo of arrest and recovery at Ex.3/A and FIR as Ex.3/B; PW-2 Fazal Din at Ex.4 and IO ASIP Jamshed Bangash was examined at Ex.5, who produced letter to FSL and FSL report at Ex.5/A & 5/B respectively. Thereafter, prosecution side was closed at Ex.7.

5. Statement of accused was recorded u/s 342 Cr.P.C. at Ex.8. The accused denied the prosecution allegations and claimed his false implication in this case. The accused neither examined himself on oath nor did he lead any evidence in defence to disprove the prosecution allegations. He further stated that he is innocent. He stated that he was taking tea at tea stall near police post of PS Jackson after Jumma prayer when policemen in civil dress came there and brought him to PS. He further stated that the policemen took away his CNIC, cash and other articles and falsely involved him in this case as he could not arrange the amount demanded from him by the police.

6. Learned trial court Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above through the impugned judgment. Hence this appeal.
7. This Court vide order dated 05.05.2016 allowed the appellants application under S.426 Cr.PC and accordingly his sentence was suspended and he was released on bail subject to furnishing surety in the sum of RS 20,000 and PR bond in the like amount to the satisfaction of the Nazir of this court until his appeal was decided.
8. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.
9. Mr. Sikandar Khan, learned advocate for the appellant has contended that the prosecution case is highly doubtful; the place of incident was located at a busy place yet, no member of the public was joined to attest the arrest and recovery; there are material contradictions in prosecution evidence, hence it cannot be safely relied upon; that the SHO had not authorized the inquiry and that for all the above reasons the appellant should be acquitted.
10. Mr. Zafar Ahmed Khan, learned Additional Prosecutor General Sindh very fairly conceded to the contentions of learned counsel for the appellant and did not support the impugned judgment.
11. I have carefully considered the contentions of learned advocate for the appellant, learned Additional Prosecutor General

Sindh for the State, scanned the entire evidence, the impugned judgment and considered the relevant law.

12. I have come to the conclusion that the prosecution has failed to prove its case beyond a reasonable doubt against the appellant for the following reasons; that no independent Mushir has been associated with the arrest and recovery which was important as all the police are interested witnesses who allegedly foisted the recovery on the appellant especially as this was a busy area; that the investigation seems to have been carried out in a faulty manner as the IO did not even bother to inspect the wardat or take the statement of police men Fazal Din who was present at the time of arrest and recovery; that there are contradictions in the evidence of the PW's (For example PW Bangash states that he recorded the statements of the witnesses on 09.08.2014 whereas PW Fazal Din states that he recorded his statement on 08.08.2014). Most importantly however in my view when PW Ghulam Nabi made the recovery from the appellant in his statement he only states that he recovered one pistol and 4 live bullets which were sealed on the spot, this is corroborated by memo of arrest and seizure, FIR, and PW Fazal Din however when the sealed property was opened in court there was found to be four live bullets and an empty. No recovery of such empty was made and no explanation as to how it was a part of the sealed property has come on record which casts doubt over the recovery; that the appellant has stuck to his same line of defense throughout in his S.342 statement and through his cross examination of the PW's; that there is a mark of rub over on the pistol which is a distinguishing feature however this was not mentioned in the memo of arrest and recovery.

Sindh for the State, scanned the entire evidence, the impugned judgment and considered the relevant law.

12. I have come to the conclusion that the prosecution has failed to prove its case beyond a reasonable doubt against the appellant for the following reasons; that no independent Mushir has been associated with the arrest and recovery which was important as all the police are interested witnesses who allegedly foisted the recovery on the appellant especially as this was a busy area; that the investigation seems to have been carried out in a faulty manner as the IO did not even bother to inspect the wardat or take the statement of police men Fazal Din who was present at the time of arrest and recovery; that there are contradictions in the evidence of the PW's (For example PW Bangash states that he recorded the statements of the witnesses on 09.08.2014 whereas PW Fazal Din states that he recorded his statement on 08.08.2014). Most importantly however in my view when PW Ghulam Nabi made the recovery from the appellant in his statement he only states that he recovered one pistol and 4 live bullets which were sealed on the spot, this is corroborated by memo of arrest and seizure, FIR, and PW Fazal Din however when the sealed property was opened in court there was found to be four live bullets and an empty. No recovery of such empty was made and no explanation as to how it was a part of the sealed property has come on record which casts doubt over the recovery; that the appellant has stuck to his same line of defense throughout in his S.342 statement and through his cross examination of the PW's; that there is a mark of rub over on the pistol which is a distinguishing feature however this was not mentioned in the memo of arrest and recovery.

13. For the above reasons there are several circumstances which create doubt in the prosecution case. **In the case of Tariq Pervez V/s. The State** (1995 SCMR 1345), the Hon'ble Supreme Court has observed as follows:-

"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single 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."

14. Thus, for the above stated reasons, I hold that the prosecution has failed to prove its case against the appellant, therefore, while extending the benefit of doubt, appeal is allowed. The impugned judgment is set-aside and the appellant is acquitted of the charge. The appellant is present in court on bail. His bail bond stands cancelled and surety is hereby discharged.