

30-10-2019

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3972

IN THE HIGH COURT OF SINDH AT KARACHI

CR. APPEAL No. *688* of 2019

Muhammad Yasir s/o Muhammad Farooq  
Muslim adult, R/O Karachi  
Presently confined in central prison  
Karachi .....Appellant/Accused

VERSUS

The State.....Respondent

F. I. R No.136 of 2014  
U/S. 24 of SAA 2013  
PS. Jamshid Quarter

CRIMINAL APPEAL UNDER SECTION 410 CR.P.C

Being aggrieved and dissatisfied with the judgment dated.09-10-2019 passed by V Additional Sessions Judge Karachi East/ Model Criminal Trial Court (Extension), in above noted crime, whereby present accused convicted in the offence section u/s 265-H(ii) Cr.PC for the offence under section 23 (i)A of SAA 2013 and sentence him for the period of 07 years and to pay fine of Rs.50,000/- and in default thereof to undergo simple imprisonment for three (04) months. Hence, it is prayed on behalf of the appellant that this Hon'ble court may be pleased to set aside the impugned judgment as well as sentence awarded to the accused, on the consideration of following facts and grounds:-

*Copy of impugned judgment dated.09-10-2019  
is attached herewith as annexure 'A'*

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha*

CRIMINAL APPEAL NO.698 OF 2019

Appellant: Muhammad Yasir, s/o Muhammad Farooq,  
Through Mr. Imdad Advocate

Respondent: The State through M/s. Muhammad Iqbal  
Awan, Additional Prosecutor General,  
Sindh and Mumtaz Ali Shah, Assistant  
Prosecutor General Sindh.

Date of Hearing : 05.09.2024

Date of Judgment : 10.09.2024

### J U D G M E N T

*Mohammad Karim Khan Agha, J.* Appellant Muhammad Yasir son of Muhammad Farooq, was tried in the in the Model Criminal Trial Court (Extension)/Court of Vth Addl. Sessions Judge (East) Karachi in Session Case No.2259 of 2015 arising out of FIR No.136 of 2014 under Sections 23(I) A Sindh Arms Act registered at Police Station Jamshed Quarter and vide Judgment dated 09.10.2019 he was convicted and sentenced under section 265-H(2) Cr.P.C & under Section 23(i)A Sindh Arms Control Act, 2013 to suffer R.I. for 07 years with fine of Rs.50,000/- (Rupees Fifty Thousand). In case of default in payment of fine he shall suffer SI for (04) month. However, he was also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 20.04.2014 SIP Qurban Abbasi on receiving information alongwith complainant and his subordinate staff reached at the house bearing No.C-155, near High School, Bijli Ground, Patal Para and on the pointation of witnesses secured one 9mm pistol bearing No.A-6556335 and empty shells from the said house. It is further alleged that the complaint has come to know from the witnesses that accused Yasir son of Farooq opened straight fires upon Mst. Salma and Sajid Mehmood, from the said recovered pistol, as a result of which Mst. Salma succumbed to her injuries. The accused succeeded to run away from the spot, however, injured

Sajid Mehmood snatched the said pistol from accused. Hence, this FIR was lodged.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined four (03) PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. wherein he claimed that he is innocent. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier in the judgment and hence, the appellant has filed this appeal against his conviction and sentence.

6. I have heard learned counsel for the appellant and learned Addl. Prosecutor General Sindh as well as learned counsel for the complainant and perused the record.

7. This appeal is an off shoot case of the main case being criminal appeal 700/2019 whereby the appellant was convicted and sentenced under S.302 (b) PPC and S.324 PPC for causing injuries by firearm to Sajjid and the deceased Mst.Selma.

8. According to the prosecution case the appellant used a single pistol to injure Sajjid and murder the deceased by gun shot fire which pistol was grabbed by Sajjid after he was shot and the pistol remained at the wardat. As such as per the prosecution evidence in the main case there was only one pistol which was used in the crime however it appears from the prosecution evidence that two separate pistols were recovered from the crime scene by police officers PW 2 Qurban Ali Abbassi and PW 3 Sultan Ahmed which does not stack up.

9. The evidence in respect of the recovery of the pistol was excluded from the main case on account of the reasons mentioned in para 8 above. Since the pistol was not recovered from the accused on the spot and there is no evidence of when he was arrested and whether at the time of arrest he was already carrying a pistol and the fact that two pistols were recovered at the scene

when there could only have been one pistol as per the prosecution case makes it doubtful which, if any, of the pistols belonged to the appellant. As such the appellant is acquitted of the charge by being extended the benefit of the doubt.