

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No.S-68 of 2024

Appellant: Abdul Latif son of Muhammad Siddique Jorkhani
Mazari
Through Mr. Pardeep Kumar B. Butani, Advocate.

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

Date of hearing: 12.12.2024

Date of decision: 12.12.2024

Date of reasons: 16.12.2024

JUDGMENT

SHAMSUDDIN ABBASI, J.:- The listed Criminal Appeal impugns the Judgment dated 18.07.2024, delivered by learned Additional Sessions Judge-II, Kandhkot in Sessions Case No.15/2024 (*Re. State. v/s. Abdul Latif*), outcome of FIR bearing Crime No.05/2024, for offence punishable under sections 23(1)(a) & 25, Sindh Arms Act, 2013, whereby the appellant was convicted and sentenced to suffer R.I for ten years and to pay fine of Rs.200,000/-; in case of default in payment of fine he shall suffer S.I for two years more in addition to substantive sentence. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The facts in a nutshell are that on 07.01.2024 HC Ali Murad of P.S A-section Kandhkot, alongwith his subordinate staff including P.C Sartaj Aziz and PC Sadam Hussain, while patrolling arrested present appellant Abdul Latif at a road near Ilyas Warehouse and recovered an un-licensed 9mm Pistol alongwith magazine containing 03 live bullets (without number) at 1600 hours, which he sealed on the spot as well as prepared a memo and he along with mashirs put their signatures on the sealed parcel as well as memo and brought present accused and recovered crime weapon at Police Station, where FIR to the above extent was lodged against the appellant.

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 case, the prosecution examined and relied upon the evidence of in all four prosecution witnesses i.e. HC/Complainant-cum-author of FIR Ali Murad (PW-01 Ex.3), PC Sartaj Aziz (PW 02 Ex. 4), I/O SIP Noor Muhammad Pathan (PW-03 at Ex. 5), WPC Nabi Bux, Incharge Malkhana (PW-04 Exh-6). They exhibited several documents in their evidence and then side of prosecution was closed.

5. In his statement u/s 342 Cr.P.C., the appellant/accused denied the prosecution case and claimed to be innocent. 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 submits that the appellant is innocent and he has been falsely implicated in this case due to malafide and ulterior motives; that the weapon was foisted upon him by the police at the behest of complainant of main case with a view to strengthen the said main case; that the impugned judgment is perverse, bad in law and suffers from material irregularities and there are a lot of contradictions, improvements and lacuna in the prosecution evidence. He finally prayed that appeal of the appellant may be allowed and the impugned judgment may be set aside.

8. Learned Additional Prosecutor General for the State submits that all the witnesses have fully supported the case of prosecution and no any major contradiction has been pointed out in their evidence, therefore, instant criminal appeal may be dismissed.

9. Heard arguments of the learned counsel for the appellant, learned Additional Prosecutor General, Sindh as well as perused the material available on record. All the P.Ws are police officials, however, it is well settled that official witnesses are as good witnesses as any other private witness, but propriety of safe administration of justice demands that their evidence must be scrutinized by the Court with cautious and care. It is admitted that per F.I.R. as well as memo of recovery of the pistol, the description of the pistol was shown as one "One T.T. Pistol of 30-bore number erased alongwith magazine, Pak made"; however, the complainant/IO as well as mashir in their cross-examination have contradicted to each other, which renders their evidence untrustworthy and

unreliable; that before the alleged incident, father of the appellant had filed Habeas Corpus Petition No.180/2023 under section 491-A Cr.P.C before the learned Sessions Court and 1st Civil Judge and Judicial Magistrate, Kashmore was directed to pay surprise visit to Police Station Kashmore and recover him if found illegally detained and the learned Magistrate found the appellant in the lockup; however, he was shown arrested as suspect in Crime No.71/2021, registered under section 381-A P.P.C; that thereafter seemingly the police became personal and lodged F.I.R. bearing Crime No.237/2023, under sections 353, 186, 225-B, 147 P.P.C against the appellant; thereafter the appellant filed Criminal Miscellaneous Application No.1697/2023 before Ex-Officio Justice of Peace, Kashmore for seeking legal protection against the highhandedness of the police of Kashmore-Kandhkot, which was allowed in favour of the appellant; that after obtaining bail from the Sessions Court, Kashmore-Kandhkot, the appellant rushed to the police station Kashmore alongwith bail order for joining the trial, where he, at the instigation of the S.H.O, was beaten and then kept in custody, his father filed another Criminal Miscellaneous Application No.28/2024, which too was allowed and the police seemingly foisted instant weapon upon the appellant and involved him in a frivolous offence; that there are material contradictions between the evidence of the P.Ws and the place of incident, which is a busy road, but no independent witness has been cited. The complainant in his evidence deposed that it was the day time when the present appellant was arrested and P.W Sartaj Aziz deposed that it was night time and surprisingly the time as mentioned in the F.I.R. is 1700 hours, which is evening. P.C Sartaj Aziz in his deposition stated that on 09.01.2024, he sent the case property to FSL Larkana vide R.C. No.20, entry No.35 at about 0700 hours, however, the Incharge Malkhana Nabi Bux deposed that on 07.01.2024, ASI Noor Muhammad Pathan handed over case property to him. On 08.01.2024, the same I.O received back the same parcel and handed over to it with R.C.No.20 to P.C Sartaj Ahmed, who deposited it with FSL Larkana and further the deposition of I.O depicts that on 09.01.2024 I.O Noor Muhammad Pathan deposed that he sent the case property through P.C. Sadam Hussain to FSL Larkana vide R.C.No.20.

10. It is well settled proposition of law that single doubt created in the prudent mind is sufficient to give benefit of doubt as has been held in a case reported as Tariq Bashir v/s. The State (PLD-1995-Supreme Court-34).

11. For what has been discussed above, instant Criminal Appeal was allowed by short order dated 12.12.2024, whereby the impugned judgment dated 18.07.2024, passed by learned Additional Sessions Judge-II, Kandhkot in Sessions Case No.15/2024 (*Re-State v/s. Abdul Latif Mazar*) was set aside and the appellant was acquitted of the charge. Above are the detailed reasons for said short order.

JUDGE