

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Appeal No. S-126 of 2016

Date

Order with signature of Judge

1. For hearing of application under Section 426 Cr.P.C. on M.A. No.4690/2016.

2. For hearing of cases.

29-08-2017

Mr. Muhammad Ali Pirzado, advocate for the appellant.

Mr. Gada Hussain, DDPP for the State.

For the reasons to be recorded later-on, instant criminal appeal is allowed. Impugned judgment dated 28.11.2016 passed by I-Additional Sessions Judge Kandhkot is set-aside and the appellant is acquitted of the charge.



Judge

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

MS

Cr. Appeal No. S – 126 of 2016

Appellants: Deedar Sabzoi
through Mr. Muhammad Ali Pirzado, Advocate

Respondent: The State
through Mr. Gada Hussain, DDPP.

Date of hearing: 29-08-2017


JUDGMENT

Omar Sial, J. The Appellant has impugned a judgment dated 28-11-2016 passed by the learned 1st Additional Sessions Judge at Kandhkot. In terms of the said judgment the Appellant was convicted and sentenced for an offence pursuant to section 23(1)(a) and 25 of the Sindh Arms Act, 2013 to rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 20,000 or suffer another 1 year of simple imprisonment in default. The benefit of section 382(B) Cr.P.C. was given to him.

Brief facts of the prosecution case are that on 4-4-2016, A.S.I. Ali Baig Bijrani lodged FIR bearing number 91 of 2015 u/s 23(1)(a) and 25 of the Sindh Arms Act, 2013 at the A Section police station in Kandhkot. In the FIR he recorded that earlier that day a police party led by him was on duty when it received information that an absconder in crime number 338 of 2014, namely Deedar Sabzoi (the present Appellant) was present near the Sabzi Mandi. The police party reached the identified spot where at about 1550 hours they saw Deedar coming on foot. On seeing the police he attempted to run but the police party apprehended and arrested him. Upon his search a T.T. pistol along with 3 bullets was recovered. The Appellant told the police party that he did not have a licence for the pistol and that it was the same pistol with which he had committed the murder of one Imdad Sadozai and for which murder crime number 338 of 2014 had been registered.

The charge against the Appellant was framed on 14-10-2015 to which he pleaded not guilty and claimed trial.

In order to prove its case the prosecution examined 2 witnesses. PW-1 Mohammad Tayab was the witness to the memo of arrest and recovery. PW-2 Ali Baig Bijrani was the complainant and the investigating officer.

The Appellant's statement under section 342 Cr.P.C. was recorded on 2-11-2016 in which he pleaded innocence. 

I have heard the learned counsel for the Appellant as well as the learned DDPP for the State and examined the record with their able assistance. My observations are as follows.

1. The memo of arrest and recovery does not record any description of the weapon seized. While PW-2 claimed that he had sent the weapon to the ballistic expert, he could not produce the ballistic experts report or any other evidence regarding the same. In these circumstances it could not be proved whether the weapon recovered was indeed what the prosecution claimed it was; that the same was a genuine weapon and whether the same was even in working order. In the absence of any forensic report it cannot be said conclusively that the weapon recovered was indeed the one with which the Appellant was said to have committed a murder earlier.
2. PW-2 did not produce the relevant police entries recording the departure from and arrival to the police. Oddly enough he also did not know who the in charge of the police station was at the relevant time. This witness deposed that there were many people available on the spot however he did not cite any private and independent person as a witness nor did he even attempt to ask anybody to do the same. PW-2 also did not have a section 164 Cr.P.C. statement of the Appellant recorded for the alleged confession he made when he was arrested.
3. PW-1 deposed that PW-2 recorded his statement under section 161 Cr.P.C. after the arrest of the Appellant. PW-2 however in his testimony deposed that he recorded the statement at the police station after the FIR was lodged. The two witnesses also contradict each other on the distance the Appellant was at when he saw the police party as well as who apprehended and arrested the Appellant. It also appears odd that instead of disposing of the weapon with which the police claimed the Appellant had committed a murder, the Appellant chose to roam around with the same weapon for a substantially long period after committing a murder.
4. Substantial doubt is created in the prosecution case due to the above observations, the benefit of which should have gone to the Appellant.
5. Above are the reasons for the short order dated 29-8-2017 in terms of which the appeal was allowed, the Appellant acquitted of the charge and ordered to be released.


12-4-2017
JUDGE