Cr.Rev .No.24 of 2009.

Barkat Ali v/s The State.

1.For Katcha peshi.
2.For Hearing of MA 75/09.
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25.03.2009. Mr.Shamsuddin N. Kobher, advocate for the applicant.
Mr.Agha Ather Hussain, Assistant A.G.
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ARSHAD NOOR KHAN, J.- **This revision application has been directed against the order dated 27.2.2009 passed by the learned Sessions Judge, Ghotki whereby the conviction and sentence awarded to the applicant by the learned Civil Judge & Judicial Magistrate, Dahrki in Cr.Case No.145 of 2006 State v Barkat Ali under Section 13(e) Arms Ordinance, 1965 in Crime No.160 of 2005 of Police Station, Daharki, whereby he has been convicted and sentenced to suffer one year R.I and fine of Rs.2000/- and, in case, of default in payment of fine, he shall suffer further R.I for 15 days with benefit of Section 382-B, Cr.P.C, has been maintained.**

The facts leading to the present revision application in brief are that the applicant has been charged for a murder of one Hazoor Bux by inflicting fire arm injuries to the deceased, which offence was registered vide Crime No.152/2006 of Police Station, Daharki and the present applicant was arrested in that crime and during the course of interrogation in that crime, he disclosed about the crime weapon, which he had concealed in a heap of certain crops at his land and prepared to lead to the police party for recovery of the same. On such discloser of the applicant, the police party headed by SHO Abdul Majeed, HC Abid Hussain and PC Sadhayo were taken by the applicant in a private Datsun and brought to them to a heap of wheat at the agricultural land where from he took out pistol and handed over the same to the SHO who prepared mashirnama of arrest and recovery at the spot and brought the applicant and the case property to Police Station and registered the FIR as stated above. After usual investigation challan against the applicant was sent to the Court to stand trial. After receipt of the challan and compliance of Section 241, Cr.P.C, the charge was framed against the applicant on 11.12.2006 to which he pleaded not guilty and claimed trial. After framing the charge, prosecution examined SHO Abdul Majeed complainant, who produced copy of FIR and mashirnama of arrest and recovery as well as PW HC Abid Hussain, who was mashir of recovery of pistol so also PW ASI Barkat Ali, who registered the FIR and side of the prosecution was closed.

The statement of the applicant was recorded under Section 342, Cr.P.C wherein, he denied to have surrendered any crime weapon before the complainant and that the pistol has been foisted on him and that the PWs are police officials, who have deposed falsely

against him. He claims to be innocent and had not examined himself on oath under Section 340, Cr.P.C and intended to examine DW Hazoor Ahmed in his defence but subsequently he did not produce him in his defence. Learned Judicial Magistrate, Daharki after hearing the learned counsel for the parties convicted and sentenced to the applicant as stated above.

Being highly aggrieved and dis-satisfied with the conviction and sentence, the applicant preferred Cr.Appeal No.04 of 2009 before the Sessions Judge, Ghotki, which also met with the fate of dismissal; hence this criminal revision application.

I have heard Mr.Shamsuddin N. Kobher, learned counsel for the applicant and Mr.Agha Ather Hussain, Assistant Advocate General for the State.

The learned counsel for the applicant vehemently contended that there are material contradictions in the case of the prosecution, which have been ignored by the two Courts below though the said contradictions are adversely reflecting on the case of the prosecution. He further contended that the pistol has been foisted on the applicant and that no mashirs of the locality were picked-up at the time of alleged recovery, and furthermore the driver of the Datsun Pickup in which the police party went to recover the crime weapon, was with the police party and even the said Datsun driver has not been cited as mashir of the recovery. According to him, there is a delay in recovery of the pistol, which also badly reflects on the case of the prosecution and the learned lower Court did not examine the evidence in its true perspective and the revision may kindly be allowed and the applicant may be acquitted from the charge.

The learned Assistant Advocate General for the State while refuting the arguments advanced on behalf of the applicant, vehemently contended that all the witnesses have fully supported the case of the prosecution against whom no enmity has been pleaded by the applicant and that the evidence of the police officials may be treated as good as evidence of any other independent witnesses could be, as such the applicant has been rightly convicted and sentenced by the Courts below.

I have considered the arguments advanced by the learned counsel for the parties and have gone through the entire material and evidence available on record.

Admittedly, the applicant was arrested in Crime No.152/2006 under Section 302, PPC allegedly committed the murder of one Hazoor Bux by inflicting him fire arm injuries. The arrest of the applicant in the main case has not been controverted by the applicant. It is also not disputed that during the course of investigation, the applicant disclosed about concealment of the crime weapon and was prepared to lead police party to the place where he concealed the crime weapon. The evidence available on record fully shows that the

applicant voluntarily led to the police party to the heap of wheat from where he took out pistol alongwith five alive bullets and handed over to complainant Abdul Majeed SHO, who prepared the mashirnama of arrest and recovery at the spot. The leading of the applicant has been well-worded by the complainant in his evidence before the trial Court duly supported by PW HC Abid Hussain. They both have categorically stated that the applicant voluntarily led to them for recovery of the crime weapon and took out weapon from the heap of the wheat and such mashirnamas of arrest and recovery was prepared at the spot, which testimony has not received any material dent in the cross examination so as to brushed aside it.

The learned counsel for the appellant vehemently contended that the mashir of the locality or at-least driver of the Datsun, has not been cited as mashir of recovery, which submission in my humble opinion carries no weight for the reasons that Section 103, Cr.P.C speaks about the proposition of picking-up the respectable mashir of the locality when the police party is going to search the property or for recovery of certain material and, in case, if the accused is voluntarily leading to the police party and voluntarily surrendering crime weapon or case property from the place where he hide it, the condition of picking-up of the mashir of the locality is not the requirement of Section 103 Cr.P.C. Since Section 103, Cr.P.C does not debar the police official to act as mashir as such no ban could be imposed on police official not to act as mashir. The evidence of the prosecution witnesses, have been thoroughly read out by learned counsel for the applicant but no where in cross examination any material has been fished out from the statement of the complainant and other prosecution witnesses, to show that the police officials possess any grudge or enmity to implicate the applicant falsely in the present case and to foist the crime weapon on him. It is also settled principle of law that the evidence of police officials may be treated as good as evidence of any other independent witness could be, provided the police officials have tested the test of cross examination and, in case, if from the cross examination any material is fished out to show that they have implicated the accused for certain extraneous consideration or were acting malafidely then off-course, their evidence could not be considered but in absence of such allegation against them, their evidence could not be brushed aside. In the present case as discussed above no material to inflict any material dent in the testimony of prosecution witnesses has been brought on record, so as to discard their testimony which otherwise appears to be confidence inspiring. It has also not been pointed out by the learned counsel for the applicant from the evidence available on record to show that how and why the pistol has been allegedly foisted on the applicant though as per assertion of the complainant, the crime weapon was also sent to the ballistic expert for report and that the delay perse, if any, in recovery of the crime weapon, reflect adversely on the case of the prosecution.

From the appraisal of the evidence available on record, I am of the opinion that both the Courts below have rightly considered the evidence brought on record. The minor and trial contradictions in the case of the prosecution which are humanly possible, could not reflect on the recovery of the crime weapon. The revision application has therefore no merit and is therefore dismissed summarily alongwith listed application.

JUDGE

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Approved for reporting.