

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 315 of 2015

Date of hearing: 12.7.2017
Appellant: Ali Sher son of Uris through Syed
Mehmood Alam Rizvi, Advocate.
Respondent: State through Mr. Zahoor Shah, APG.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. The instant Criminal Appeal is directed against the impugned judgment dated 07.12.2015 passed by learned 1st Additional Sessions Judge, Thatta in Sessions Case. No.393/2015 Re: State Vs. Ali Sher son of Uris, whereby the Appellant was convicted under Section 265-H (ii) Cr.P.C. & sentenced to suffer Rigorous Imprisonment for four years and fine of Rs.50,000/-.In case of default of payment of fine, he shall suffer Rigorous Imprisonment for six months more, with benefit of Section 382-B Cr.P.C.

2. Brief facts of the case are that on 22.10.2015 at about 0230 hours Complainant SIP. Raja Abdul Haque of P.S. Thatta was on patrol duty alongwith his subordinate staff. When they reached at Bhutta Park, he received spy information that one Ali Sher Brohi is present at Cattle Market alongwith unlicensed weapon. On receiving such information, they reached at the pointed place and found one person was sitting on wooden cot and two Rifles were lying near him. Accused tried to flee away by taking Rifles but

police party encircled and apprehended him. Both Rifles were taken into custody and were checked that one Rifle was like a Kalashnikov having closed butt with magazine in working condition, seven live bullets were found from magazine with No. B-1268 written on the body of Rifle and Rifle of 7.62 MM semiautomatic with No. 12255414 and No.183 is written on the butt. Accused was arrested and upon asking, he disclosed his name as Ali Sher son of Uris by caste Brohi (the Appellant), resident of village Abdul Nabi Brohi, Makli, Taluka Thatta. Accused was asked to produce the license of the said weapons, to which he disclosed that these are unlicensed, which he has purchased from Gypsy. Both the Rifles were sealed at the spot separately and due to non-availability of private mashirs, PC Imam Bux and PC Nizamuddin were made mashirs of arrest and recovery. Accused and property were taken into custody and brought at Police Station and a case under Section 23 (i) (a) of the Sindh Arms Act 2013 was registered against him.

3. Police, after usual investigation, submitted Charge Sheet in the case. The Complainant/Investigating Officer of the case got conducted F.S.L of one .44 bore Rifle No. B-1268 with magazine and 7.62MM bore live cartridges and one 7.62MM bore China Rifle No. 12255414, and five 7.62MM bore live cartridges and obtained its report on 28.10.2015.

4. The learned Trial Court on 21.11.2015 framed the charge against Appellant as Ex. 2, to which he pleaded not guilty and claimed his trial vide his plea as Ex. 2/A. The Prosecution in

support of its case, examined two witnesses namely Complainant/Investigating officer SIP Raja Abdul Haque Rajput as PW-1 as Ex. 4 and PW-2/HC Nizamuddin Bhambro as Ex. 5. PW-1 produced Departure Entry as Ex. 4-A, Mashirnama of Arrest and Recovery as Ex. 4/B, FIR of the instant Crime as Ex. 4/C, letter for sending Experts Report as Ex. 4/D. Thereafter the learned District Public Prosecutor for the State closed the side of the prosecution vide statement as Ex. 6. The statement of Appellant under Section 342 Cr.P.C was recorded, as Ex. 7, wherein he produced certified true copy of Direct Complaint along with Order dated 10.05.2005 passed by learned Judicial Magistrate Thatta as Ex.7/A, Statement dated 30.11.2015 along with 17 news clippings of different Newspapers dated 14.10.2015 to 23.10.2015 as Ex. 7/B. Appellant denied the allegations leveled against him and claimed his innocence with following assertions;

“that he is land lord, business man and affiliated with the Pakistan People’s Party since long; that he having well reputation in province of Sind; that he has old enmity with Syed Ejaz Hussain Shah Shirazi and his family members due to political dispute; that prior to this incident at the instance of Syed Ejaz Hussain Shah Shirazi fake FIRs were registered against him, wherein he was acquitted from the courts of law; that he filed direct complaint No. 4/2005 against Syed Ejaz Hussain Shah Shirazi and others wherein Pw-2/ PC Nizamuddin was nominated as accused at serial No. 7 of said complaint, while brother Alam Khan of co-mashir of PC Imam Bux is also nominated as accused of his Direct Complaint at serial No.8; that he produced certified true copy of Direct Complaint along with Order dated 10.05.2005 passed by learned Judicial Magistrate Thatta that the said direct complaint is still pending at the file of learned Judicial Magistrate Thatta for adjudication; that one Ayaz Shah Shirazi elder son of Syed Ejaz Hussain Shah Shirazi, who is at present MNA from the Muslim League (N), who got him arrested by Bhattai Rangers of Malir Cantt Karachi on 14.10.2015 in between 4/5 am; that he was confined illegally by Rangers agency of District Malir Cantt,

Karachi and subsequently on 22.10.2015 he was handed over to police of Thatta; that the Rangers authority is under the control of Interior Ministry and at the instance of said MNA, weapons were foisted upon him through false FIR, such news of his arrest at the hands of Rangers were fleshed in all the newspapers and T.V Channels and after his handing over the custody to police Thatta, such news was also published and came on electronic media, such clips were produced by him through statement of learned Defence Counsel; that PWs deposed against him in order to defame him and damage his reputation with malafide intention and ulterior motive; that no recovery of unlicensed weapons were affected from him”.

5. Appellant neither examined himself on oath under Section 340 (2) Cr.P.C, nor led his evidence in his defence.

6. Learned trial Court framed the following points for determination.

“Whether the present accused was found in possession of two Rifles, out of which one was like Kalashnikov loaded with seven live rounds in the magazine and another Rifle was 7.62 MM semi-automatic containing five live bullets, on the relevant date, time and place as alleged by the prosecution?”

7. Learned Trial Court after hearing the parties convicted and sentenced the appellant as mentioned above.

8. Mr. Mehmood Alam Rizvi, learned counsel contended that the Appellant is innocent and has been falsely implicated and alleged recovery has been foisted upon him; that the Appellant was in illegal detention with Bhattai Rangers Thatta since 14.10.2015 and at the time of his arrest nothing was recovered from his possession. He next contended the impugned judgment is result of misreading and non-reading of evidence on record and the same finding is not sustainable under the law; that the learned trial Court ought to have believed the Appellant’s version, which was

supported with documentary evidence, but the learned trial Judge did not apply his judicious mind at the time of passing of Impugned Judgment and convicted the Appellant without ascertaining the truthfulness of the prosecution case; that entire case of prosecution is doubtful and based on political rivalry. He lastly prayed for allowing the instant Appeal. In support of his contention, learned counsel for the Appellant has relied upon unreported judgment dated 26.04.2017 passed by this Court in the case of Abdul Fahim alias Ajmeri Vs. The State, and the case of Mst. Shahzadi Vs. Saifullah Bughio and others (PLD 2009 Karachi 263).

9. Mr. Zahoor Shah learned DPG for the State has supported the impugned judgment.

10. I have heard learned counsel for Appellant and learned DPG for the State as well as perused the material available on record and case law cited at the bar.

11. From perusal of case file it appears that the prosecution has premised its entire case on the statement of Complainant/SIP Raja Abdul Haque Rajput as PW-1 (Ex. 4) who produced Departure Entry as Ex. 4-A, Mashirnama of Arrest and Recovery as Ex. 4/B, FIR No 175/2015 of instant Crime as Ex. 4/C, Letter for sending Expert Report as Ex. 4/E and PW-2/HC Nizamuddin Bhambro as Ex.05. Both the PWs have narrated the prosecution story.

12. That learned Trial Court, while passing the impugned judgment has ignored the following aspects of case apparent on the face of record, which cast doubt over the prosecution story:

(i) EX-7/statement of Appellant recorded under Section 342 Cr.P.C. in which he has disclosed that he was picked up by Bhattai Rangers on 14.10.2015 which is much before the date of lodging of the present FIR.

(ii) EX-7/A shows that Direct Complaint No.04/2005 was filed on 24.01.2005 before 1st Civil Judge & Judicial Magistrate, Thatta against Ajaz Shah Shirazi, P.C Nizamuddin (P.W-2), P.C Alam Khan Khaskheli (brother of co-Mushir), PC Imam Bux Khaskheli and others. That learned Magistrate registered the complaint against them vide order dated 10.05.2005.

(iii) EX-7/B-Statement dated 30.11.2015 along with 17 news clippings of different Newspapers dated 14.10.2015 to 23.10.2015 showing that the Appellant was picked up by the Rangers and subsequently handed over to Police.

(iv) Ex-4 / Deposition of PW-1, who admitted in cross that he did not disclose the bore number 7.62MM of Kalashnikov in FIR. He further admitted that as per opinion of Ballistic Expert at Sr.No.1 the above mentioned Rifle number B-1268 in question is of 44 bore. He further admitted that seven live bullets with one empty bullet are available in the Court but, the same was not mentioned in the Mushirnama. However, same was sent for FSL Report but, no description of extra bullet was given in the letter dated 26.10.2015 sent by SHO Police Station Thatta to Ballistic Expert.

v) Ex-5 / Deposition of P.W-2 in which he has admitted that the Appellant filed Direct Complaint No.4/2005 against him and Ajaz Shah Sheerazi. He further admitted that he

and PC. Alam Khan Khaskheli had remained Security Guards of Ajaz Shah Sheerazi. He further admitted that co-Mashir P.C Imam Bux is real brother of P.C Alam Khan Khaskheli which prima-facie shows that there is political rivalry; hence, false implication of the Appellant in the present case cannot be ruled out.

vi) FSL Report dated 28.10.2015 shows that the recovered articles were received on 26.10.2015 that is, after 04 days from the date of registration of FIR. That no explanation for said delay is available on record which creates doubt in the prosecution case.

13. In my view if version put forward by the Appellant and the Prosecution respectively is considered in juxtaposition, the version of Appellant seems more plausible and convincing. While the version of prosecution is totally doubtful on the premise that Appellant was picked up by Bhattai Rangers on 14.10.2015 and not by Thatta Police. Such news was also published in print media disclosing that the Appellant was picked up by Bhattai Rangers, Thatta and not by Thatta police.

14. I have noted that although news published in Daily DAWN dated 15.10.2015 is affixed by the learned Judge in paragraph No. 21 of the impugned judgment but he has not considered the same and believed the prosecution story as Gospel truth. Resultantly, learned Trial Court mislead itself to the conclusion that Appellant is guilty of the charge, caused miscarriage of justice.

15. It is also apparent on the record that learned Trial Court has ignored statement of the Appellant recorded under section 342 Cr. P. C. supported by documentary evidence which cannot be brushed aside.

16. I am of the view that prosecution has failed to bring home charge against the Appellant. It is a well settled principle in Criminal Jurisprudence that it is not necessary, there should be more than one reason creating doubt in the prosecution case. On the contrary, even a single doubt can discard the entire prosecution evidence. I am fortified by the Hon'ble Supreme Court decision rendered in the case of Hashim Qasim and other Vs. The State (2017 SCMR 986).

17. In view of the above discussion, I am not in agreement with the conclusion recorded by learned Trial Court in the impugned judgment dated 07.12.2015.

18. In the light of facts, circumstances, entire evidence, case law and relevant statute, I am of the view that the impugned judgment dated 07.12.2015 passed by the learned Trial Court is arbitrary, suffering from misreading and non-reading of evidence as well as from factual and legal infirmity thus, not sustainable in the eyes of law. Therefore, the impugned Judgment dated 7.12.2015 passed by learned 1st Additional Sessions Judge Thatta in Sessions Case No.393/2015 is set-aside. The instant Appeal is allowed and Appellant is acquitted from the charge.

JUDGE