

IN THE HIGH COURT OF SINDH AT KARACHI

CR. JAIL APPEAL NO.615/2018

Date

Order with signature of Judge

1. For hearing of MA No.10773/2018.
2. For hearing of case.

29.03.2019

Mr. Ajab Khan Khattak advocate for appellant.
Mr. Faheem Hussain Panhwar, DPG alongwith ASI Nadeem Akhtar,
CRO Branch, CIA.

ORDER

SALAHUDDIN PANHWAR, J: Appellant has assailed judgment dated 5th March, 2018 passed in S.C. No.268/2012 arising out of FIR No.26/2011, u/s 13-E of the Arms Ordinance 1965, PS CID, Karachi.

2. At the outset learned counsel for appellant contends that this is a case of erroneous observations; charge was framed in murder case on 06.05.2011 wherein accused pleaded not guilty, such plea was recorded and signed, thereafter official witnesses were examined. During trial appellant moved application that he is confined in jail since seven years, he is from KPK, therefore sentence undergone may be considered and he may be released. On such application, ADPP filed statement for closing of side on the plea that since accused has pleaded guilty therefore there is no need to examine the witnesses hence statement under section 342 CrPC was recorded wherein accused admitted the question with regard to commission of offence and he was convicted for two murders and sentenced for five years with fine of Rs.50,000/-.

3. Learned DPG contends that this case was required to be adjudicated properly. In case witnesses are not appearing, proper course was to take all coercive measure and then adjourn the matter for sine die.

4. At this juncture it would be conducive to refer the charge which is that:-

“That you on or about 26th day of January 2011 about 0145 hours, ASI Muhammad Shoaib posted at PS CID Karachi has apprehended you from Tool Plaza, Super Highway, Gadap City, Karachi and recovered six (5) Kalashnikovs without magazine, seven (7) pistols of 30 bore load magazine and 2023 live bullets without license from your possession in presence of mashirs and thereby you have committed an offence under section 13-E Arms Ordinance, 1979f within the cognizance of this court.

And I hereby direct that you be tried by this court on the above mentioned charge.”

5. It would be convenience to refer Points No.1 and 2 of the impugned judgment as under:-

“Point No.1:

From the perusal of record shows that during course of evidence one witness was examined by the prosecution, although the charge was framed in year 2011. Thereafter, this court repeatedly issued summons/BWs against PWs but no single witness appeared before the court.

However, today case was fixed for further evidence, the accused Akhtar Zareen s/o Shah Zaman moved an application, in which he voluntarily pleads his guilt and request to the court for mercy and lenient view.

From the perusal of record shows that accused was arrested on 26.01.2011, thereafter the documents were supplied to the accused and in year 2011 a formal charge was framed therefore, this court repeatedly issued summons/BWs against PWs but no single witness appeared before the Court.

As today accused Akhtar Zareen s/o Shah Zain voluntarily pleaded his guilt during recording statement of accused required u/s 342 CrPC, therefore, looking into the circumstances and in the light of application/admission of accused. I hold this point No.1 to be answered in affirmative.

Point No.2:

As accused Akhtar Zareen s/o Shah Zain voluntarily plead his guilt during recording his statement u/s 342 CrPC, and such application was also moved by the accused, however he request to the court for mercy and lenient view, I, therefore, pass sentence under section 265-H(ii) CrPC for an offence punishable under section u/s 13-E Arms Ordinance and convict the accused with five years R.I. and the accused shall also pay Rs.50,000/- fine and in default of payment of fine the accused shall suffer three months more S.I. the benefit of section 382-B CrPC is also extended to accused. The accused is present in judicial custody, he is remanded to jail alongwith conviction warrant with directions to the jail superintendent to serve out the conviction according to law. The accused Akhtar Zareen s/o Shah Zain is also convicted in Session Case No.267/2012, FIR No.24/2011, u/s 353/324/34 PPC of PS CID, Karachi, therefore both the sentences will run concurrently.

6. Needless to mention that application dated 14.02.2018 is not reflecting that same was identified by his counsel as well same is not supported by any affidavit. Diary dated 14.02.2018 states that *“Case called. Accused Akhtar Zareen is produced in custody by jail authority in the court at judicial complex. ADPP for the State is present. DC is also present. Process returned un-served. No. PW is present. Put off to 05.03.2018 for evidence. Accused is remanded to judicial custody with direction to be produced on the next date of hearing.*

Process re-issued and handed over to process server.” Such diary is not reflecting that any application was preferred by appellant or his counsel. On next hearing viz. 05.03.2018 diary shows that accused was present. PWs were present. ADPP filed statement for closing of the side. Statement under section 342 CrPC was recorded. Final arguments heard. Judgment passed and announced in open court.

7. It is strange that charge was framed in 2011, no private witnesses are attending, no official witness was examined. All of a sudden after seven years application received, prosecution closed the side. Since in this case judgment is passed without examination of witnesses, no evidence was produced on record, learned trial judge on application of appellant convicted him whereas in charge he pleaded not guilty. Such attitude is apparently creates smoke on the screen.

8. Accordingly impugned judgment is set aside. Case is remanded back for recording evidence. Trial court shall ensure to conclusion of trial within three months.

J U D G E

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