

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Appeal No.S-40 of 2020

Appellant : Aamir Shaikh S/o Ghulam Akbar
Through Mr. Muhammad Saleem Leghari,
Advocate

The State : Through Ms. Sana Memon,
Assistant Prosecutor General

Date of hearing: 03.04.2020
Date of Judgment 03.04.2020

JUDGMENT

Khadim Hussain Tunio, J,- Through the above captioned criminal appeal, the appellant has impugned the judgment dated 31.01.2020 passed by learned Ist Additional Sessions Judge / Model Criminal Trial Court, Hyderabad, in Sessions Case No.355 of 2018 (Re: the State v. Aamir Shaikh), arising out of Crime No.50 of 2018, registered at P.S Cantonment, Hyderabad, under Section 25 of Sindh Arms Act, 2013, whereby he has been convicted and sentenced to suffer R.I for 04 years and to pay fine of Rs.50,000/-. In case of default in payment of fine, he shall suffer S.I for 02 months more with benefit of Section 382-B Cr.P.C.

2. In nutshell, the accusation is that the appellant/accused was in custody in case bearing Crime No.49 of 2018 registered at P.S Cant. for offence under Section 302, 114, 34 PPC and voluntarily became ready to produce 9MM Pistol alleged to have been used in commission of murder of deceased Muhammad Juman, led the police party, took out said pistol and produce before the

complainant, which was seized by the complainant in presence of Mashirs, namely PCs Ibbad and Munir, for which F.I.R was lodged.

3. After registration of F.I.R, the Investigating Officer conducted usual investigation, recorded 161 Cr.P.C statements of the PWs, inspected place of incident, prepared memo of recovered weapon and sent it to FSL, collected report and submitted challan after concluding the investigation.

4. At trial, prosecution examined as many as two witnesses, namely Mashir HC Munir Shah and SIP complainant Zahid Siraj, who produced many documents through their evidence. Thereafter, prosecution side was closed.

5. Statement of accused U/S. 342 Cr.P.C was recorded in which he denied the prosecution allegations made against him by the prosecution and pleaded his innocence. However, he did not examine himself on oath in terms of Section 340(2) Cr.P.C to disprove of the charge nor examined any witness in his defence.

6. After hearing the learned Counsel for the respective parties, learned trial Court convicted and sentenced the appellant as stated in the preceding paragraph; hence, this appeal.

7. At the very outset, learned Counsel for the appellant has submitted that he would be satisfied and shall not press this appeal on merits, if the sentence awarded to the appellant i.e. R.I for 04 years is reduced to one already undergone by him. He further argued that appellant is a poor person, first offender and is surviving bread earner of his family and while taking lenient view, his sentence may be reduced to one already undergone by him.

8. Learned A.P.G representing the State has endorsed no objection to the proposal submitted by the learned Counsel for the appellant.

9. I have heard the learned Counsel for the respective parties and have perused the record. Perusal of record, it reflects that appellant was arrested on 26.06.2018 with crime weapon viz. 9MM pistol coupled with three live bullets. The prosecution has proved its case against the appellant beyond reasonable doubt; that there are no discrepancies in the evidence of the prosecution witnesses; that there is no legal flaw in the impugned judgment. The appellant has been awarded sentence to suffer R.I for 04 years vide judgment dated 31.01.2020. The appellant is a first offender and is only bread earner of his poor family. I, while taking lenient view against the appellant, who is sole bread earner of his poor family and being first offender, hold that the appellant has made out his case where he deserves leniency being proposed by the learned Counsel as the sentence already undergone by the appellant is sufficient to learn lesson from. Further, the appellant has already been acquitted under Section 345(6) C.P.C in main murder case by way of compromise effected into between the parties vide order dated 30.01.2020. Perusal of jail, it appears that appellant has remained in jail for 1 year 9 months and 2 days and has earned remission of 8 months and 5 days; therefore, I am of the view that the punishment appellant has already undergone is sufficient for a first offender like appellant particularly when the learned defence counsel has submitted that the appellant is remorseful of his past and wants to improve himself.

10. In view of the foregoing, I dismiss this appeal on merits and maintain the conviction and sentence awarded to the appellant by the learned trial Court vide judgment dated 31.01.2020. However, modify the conviction and sentence awarded to the appellant to one already undergone by him, which shall include the period, which the appellant is required to undergo in case of default of fine amount. Since the sentence awarded to the

appellant is modified to one already undergone by him, therefore, he is ordered to be released forthwith in the instant case, if not required in any other custody case.

11. The instant appeal alongwith pending application is disposed of in the above terms.

JUDGE

Shahid