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

Criminal Acq. Appeal No.S-31 of 1999

For hearing of main case.

Appellant:	State through Mr. Nazar Muhammad Memon, Addl.P.G.
Respondent:	Hamid son of Muhammad Uris Gopang in person.
Date of hearing:	20.01.2020
Date of decision:	20.01.2020

J U D G M E N T

KHADIM HUSSAIN M. SHAIKH,*J:-* This Criminal Acquittal Appeal is directed against judgment dated 28.05.1998 passed by the learned Civil Judge & F.C.M. Matli, in case No.04 re: State vs Hamid Gopang emanating from crime No.12 of 1998 registered at police station Matli for offences under Section 13(d) Arms Ordinance, 1965.

2. Briefly the facts of the case are that on 15.03.1998 police party headed by SIP Muhammad Ramzan Behrani SHO PS Matli along with his subordinate staff including PC Nazir Hussain, PC Abdul Karim and PC Driver Tariq Mehmood on receiving spy information that three persons duly armed with weapons had boarded in coaster No.R-0572 with intention to commit certain offence, then second patrolling police party comprising of PC Liaquat Ali and PC Ghulam Qadir had joined them and went towards Café Tahir, where they encircling the aforesaid Coaster had apprehended Dur Muhammad son of Sujawal Gopang and Hamid son of Uris Gopang having recovered 12 bore country made pistols along with three and two live cartridges respectively from them and then they were arrested and such mashirnama was prepared at the place of recovery and then the recovered property and accused were brought at police station Matli, where two separate FIRs were lodged against both the aforesaid accused. After completing formalities a formal charge was framed against accused Hamid, to which he pleaded not guilty and claimed his trial. The prosecution examined four witnesses namely complainant SIP Muhammad Ramzan Behrani, PW mashir Muhammad Nawaz, PW-3 PC Nazeer Hussain and PW-4 mashir Hamid, who have also produced FIR, mashirnamas and then the prosecution closed its side. Thereafter, the statement

of the accused/respondent under Section 342 Cr.P.C was recorded, wherein he denying all the allegations professed his innocence. After conclusion of the trial and hearing the parties counsel, the learned trial Court acquitted the respondent of the charge vide impugned judgment dated 28.5.1998, hence this appeal.

3. Learned Additional Prosecutor General has contended that the prosecution by examining four witnesses had proved its case against the respondent beyond a reasonable doubt; and, that no animosity of the police was established by the respondent for his false implication in this case. Learned Additional Prosecutor General prays that the impugned judgment may be set-aside and the respondent may be convicted.

4. Respondent Hamid, who is present in person has stated that he was falsely implicated by SIP Muhammad Ramzan Behrani at the instant of one ASI Abdul Jabbar Kalhoro posted at PS Matli resident of their village Lohari Sharif Badin due to their enmity with him; that he has soft and clean record and antecedents. He prays for justice.

5. I have considered the submission of learned Addl. Prosecutor General and the respondent Hamid and have gone through the material brought on record. From a perusal of the record it would be seen that this Criminal Acquittal Appeal is pending since 25.11.1998 without any progress. The private witnesses namely driver of the coaster Muhammad Nawaz and conductor of the coaster Hamid having not supported the prosecution case, who were declared hostile. According to PW Muhammad Nawaz while driving the aforesaid coaster on 15.03.1998, he reached Matli at about 0815 hours and stopped his coaster in front of Café Tahir and he was at the driving seat when police personal came and entered into the coaster and offloaded three persons sitting on the last back side seat of the coaster and took them away then they were called at police station Matli, where they were informed that the police had apprehended the accused from the coaster and secured arms from his possession. Police prepared mashirnama and obtained signature thereon. The evidence of PW-4, who allegedly acted co-mashir of arrest and recovery is also in line with the evidence of Pw Muhammad Nawaz. In the wake of such statements both mashirs Muhammad Nawaz and co-mashir Hamid were declared hostile; the alleged country made pistol was not sent to the expert to ascertain its working condition and nothing has been

brought on record to show that the alleged country made pistol shown to have been recovered from the respondent was in the working condition; complainant I.O SIP Muhammad Ramzan Behrani has admitted that he did not call any private mashir prior to proceeding towards Café Tahir; several persons were gathered around the place of incident that spy was with him; on the other hand PW PC Nazir Hussain has stated that spy was let by them at the spot, where he furnished the information; he also admitted that about 100 people had gathered at the place of occurrence and that ASI Abdul Jabbar and PC Abdul Karim were posted at PS Matli. Apart from the above which rendered the prosecution case is bristled with many other discrepancies and infirmities, which need not be discussed here just to save the space. I have gone through the impugned judgment passed by the learned trial Court and find that the learned trial Court after appreciating the evidence brought on record in its true prospective has acquitted the accused of the charge and such a conclusion having been based on evidence, which is apt to the facts and circumstances of the case in law do not call for any interference more particularly in an Acquittal Appeal, in which, after the acquittal of the accused presumption of doubt innocence is created in their favour. Accordingly, this Criminal Acquittal Appeal having no substances is dismissed.

JUDGE

Ahmed/Pa