

IN THE HIGH COURT OF SINDH, KARACHI
Criminal Appeal No.314 of 2014,

PRESENT:

Mr. Justice Arshad Hussain Khan

Muhammad Asif vs. The State

Syed Khurram Kamal, Advocate for Appellant

Mr. Riasat Ali, D.D.P Sindh. .

Date of hearing: 28.11.2016

Date of judgment: 07 .12.2016

JUDGMENT

ARSHAD HUSSAIN KHAN, J. This criminal appeal is directed against the Judgment dated 16.9.2014, passed by learned VIIIth Assistant Session Judge, Karachi (East) in Sessions Case No. 1423 of 2013, vide F.I.R. No. 523/2013 U/s 23-i-A Sindh Arms Act, lodged at P.S. Gulshan-e-Iqbal, Karachi, whereby the appellant, Muhammad Asif son of Haji Khuda Bux, was convicted and sentenced to undergo R.I. for six years with fine of Rs.40,000/- and in case of non-payment of fine to further undergo SI one (1) month. However, benefit of section 382-B, Cr.P.C was extended to the appellant in the impugned Judgment. Hence, the appellant through the above captioned appeal has prayed for his acquittal.

2. I have considered the arguments advanced by leaned Counsel for the appellant and learned Prosecutor appeared for the State and have also carefully gone through the record of the case with their able assistance.

3. Prosecution story as narrated in the FIR and in memo of arrest and recovery, in nutshell, is that on 20.09.2013, SI Azadar Hussain of P.S. Gulshan-e-Iqbal Karachi along with police party were busy on patrolling when they reached at main University Road, near Caltex Petrol Pump, Block-6, Gulshan-e-Iqbal, Karachi, saw the accused was committing robbery with one Abid, the police party apprehended the accused and recovered from him 30 bore pistol with loaded magazine and five live bullets, the accused could not show the license of weapon, since the alleged act of accused was covered by Section 23(i)Arms Act, therefore, the FIR was lodged. Perusal of record

shows that the charge was framed against the appellant as Ex.2, in which he pleaded not guilty and claimed to be tried as Ex.2/A.

4. From the perusal of record, it appears that appellant was arrested by the police at the spot during commission of robbery along with incriminating weapon i.e., 30 bore pistol loaded magazine without license and five bullets. Such fact is also corroborated by the evidence of private mashir namely Muhammad Abid son of Muhammad Ayub [Ex5] wherein he has categorically deposed that on 29.09.2013, he was going to house from his shop and while waiting on CNG pump for his turn, suddenly one person came suspiciously and took out pistol, and snatched his wallet containing cash amount of Rs.850 and miscellaneous cards, documents scratch card of mobilink Rs.100/-mobile phone Nokia 1101, meanwhile police reached at the spot and apprehended the accused/appellant. He further deposed that after arrest the accused disclosed his name Muhammad Asif. Police conducted personal search and recovered pistol and bullets as well his wallet and mobile phone. He also deposed that police prepared memo of arrest and recovery and obtained his signatures. Further the police visited the place of incident in his presence and prepared such memo and obtained his signature on it. He identified the accused/appellant and the case property. Record also transpires that the other eye witnesses namely Muhammad Azam (HC) [Ex.4], and Ishaq Shah (SI) [Ex.6], during their evidence fully supported the case of the prosecution and the defence counsel failed to shake their evidence.

5. Learned counsel for the appellant, at the outset, has contended that sentence awarded to the appellant is higher and admittedly the appellant served major portion of the sentence, therefore, appellant, having no criminal history is entitled to reduction in the sentence. Learned counsel prays that the sentence of the appellant may be reduced to one already undergone.

6. Conversely, learned Prosecutor confirmed that the appellant is not previously convicted in any case, however, he supported the impugned judgment and submitted that the appellant has served out major portion of sentence i.e. more than 46 months.

7. The evidence led by the prosecution as aforesaid is in line with the case as highlighted above with no material variation or lapses; the memo of recovery and the FIR aforesaid stand fully corroborated and resultantly proved to the satisfaction of the trial Court; the defence depended upon mere denial of the charge and case as well as evidence; and no defence evidence at all has been adduced. The initial burden resting on the prosecution stand

discharged on its part and the appellants/accused have failed to rebut the same as provided under the law and to lead defence evidence establishing his innocence in the matter. The defence Counsel prayed for mercy in the matter of punishment on the ground that he is first offender and bread earner member of his family may be dealt with lenient view, more particularly, he has served major portion of his sentence.

8. Since, the appellant has already served major portion of sentence i.e. more than 3 years 10 months as per jail roll, dated 15.09.2016, therefore, relying upon the ratio decidendi, laid down by the apex court in various cases relating to narcotics act and others, he may be allowed to lead his life as responsible citizen, to support his family for their welfare and wellbeing. Reliance can be placed on the cases of *Amir Zeb v. The State (PLD 2012 SC 380)*, *Fareedullah v. The State (2013 SCMR 302)* and *Nasreen Bibi's case (2014 SCMR 1603)*.

9. In view of the aforesaid reasons while maintaining the conviction, I reduce the sentence of the appellant to one already undergone. Benefit of section 382-B would remain intact. The amount of fine i.e., Rs.40,000/- (rupees forty thousand only) shall also remain intact and in default thereof the appellant will undergo one (1) month SI. Let the appellant be released forthwith, if not required in any case.

Accordingly, the present criminal appeal along with listed application is disposed of in the manner indicted above.

JUDGE

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