

# IN THE HIGH COURT OF SINDH, KARACHI

## Criminal Appeal No. 521 of 2020

Appellant Dheeraj Adan : Mr. Amir Tabbasum, Advocate, holds brief for Mr. Muhammad Nadeem Khan, Advocate.

State : Through Mr. Zahoor Shah, D.P.G, Sindh, for the State.

Date of hearing : 21.01.2022

Date of Judgment : 21.01.2022

---

### J U D G M E N T

**Muhammad Saleem Jessar, J.-** Through this appeal, Appellant has assailed Judgment dated 09.11.2020, handed down by learned Additional District & Sessions Judge-IX, Karachi (South) in Sessions Case No.202/2019 (re: The State Vs. Deehraj Adan), being outcome of FIR No.10/2019 registered at Police Station Naiper, Karachi, under Section 23(i)(a) of Sindh Arms Act, 2013, whereby he convicted the accused / appellant for the offence punishable under Section 23 (i) (a) of Sindh Arms Act 2013 and sentenced him to undergo R.I. for three (3) years with fine of Rs.5,000/-. In case of default, appellant was directed further to undergo S.I for one month. However, the appellant was extended benefit of Section 382-B Cr. P.C.

2. The crux of the prosecution case are already mentioned in the FIR as well as impugned judgment, therefore, there is no need to reproduce the same.

3. A formal charge was framed against the accused vide Ex.02 to which he pleaded not guilty and claimed to be tried vide his plea Ex.2/A.

4. In order to prove its case, prosecution examined PW-1/SIP Ahmed Nawaz at Ex.03. PW-2/PC Shahid at Ex.04. PW-3/ASI Zafar Iqbal at Ex.5. Thereafter, learned DDPP closed the side of prosecution vide his Statement Ex.6

5. Statement of the accused was recorded under section 342 Cr. P.C. vide Ex.7 wherein he denied the prosecution allegations and claimed to be innocent. However, neither he examined himself on oath nor produced any witness in his defence.

6. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court vide impugned judgment convicted and sentenced the appellant / accused, as stated above. Against said judgment, the appellant has preferred instant appeal.

7. I have heard learned counsel holding brief for counsel for the appellant as well as learned D.P.G. appearing for the State and perused the material available on the record.

8. Learned counsel holding brief, at the very outset submits instant case is offshoot of main Crime vide F.I.R. No.09/2019 registered at P.S. Napier, Karachi under Section 392/34 PPC. He next submits that said case, after challan, was tried by the Court of XVIIIth Judicial Magistrate/Model Trial Magistrate, Karachi (South) vide Criminal Case No.2926/2019 (re- The State Vs. Dheeraj Adan and Narain). He further submits that appellant filed an application under Section 249-A Cr.P.C, which by means of order dated 28.10.2019 was allowed and the appellant has been acquitted from the charge arisen out of Crime No.09/2019 of P.S Napier, Karachi, under Section 392/34 PPC. He further submits that instant case, being its offshoot, the appellant prays that he may be acquitted from the charge of main case in the light of dicta laid down by this Court in case of *Manjhi v. The State (PLD 1996 Karachi 345)*. In support of his contention, he has referred to Annexure-D page-33 of the Court file where copy of the said order has been annexed.

9. Learned Deputy Prosecutor General has frankly conceded to the submission of appellant's counsel and has candidly given his No Objection to the grant of instant appeal.

10. I have gone through R&Ps of the case and order dated 28.10.2019 passed by the trial Court whereby appellant as well as co-accused were acquitted of the charge of main case being outcome of Crime No.09/2019 of P.S Napier, Karachi. Perusal of said order reveals that complainant of main case/crime was examined before the trial Court on 28.10.2019 at Ex.03 whereby he had categorically deposed that the appellant and co-accused were not the real culprits of the offence and none was arrested by the police on same day and that the complainant got registered case vide Crime No.09/2019 at the instance of police officials.

11. Heard arguments, record perused. As stated above, instant case is offshoot of main Crime No.09/2019 vide Criminal Case No.2926/2019 (re-the State Versus Dheeraj Adan and Narain), the appellant, as appears from record, had already been acquitted from the charge of main case; hence, propriety of law demands, appellant should be acquitted from the charge of instant case.

12. It seems that the legal position in such a situation, as enunciated by the Superior Courts, is that when an accused has been acquitted in the main case, he would be entitled to acquittal in a case which is offshoot of the main case. In this connection, reference may be made to the case of Yasir Chaudhry Vs. The State reported in 2012 MLD 1315, wherein it was held by Honourable Lahore High Court as under;\_

*“In the case reported as Manjhi v. The State (PLD 1996 Karachi 345) it has been held that when the accused has been acquitted in the main case, he would become entitled to acquittal in a case which is offshoot of the said case. Same is the position here, as the present lis is an offshoot of the main murder case, so, respectfully following the dictum laid down in the judgment supra, this petition is allowed and the application of the petitioner under section 249-A Cr. P.C. is accepted and the petitioner is **acquitted** from the charge in case F.I.R. No.17 of 2003 dated 12.1.2003 registered under section 7 of the Surrender of Illicit Arms Act No.XXI of 1991 with Police Station Civil Lines, Bahawalpur.”*

13. Keeping in view above legal position, it can safely be held that when the accused / appellant has been acquitted in the main case and instant case being offshoot of said main case, the appellant deserves to be acquitted in this case also.

14. As stated above, learned Deputy Prosecutor General has also not controverted this legal position and has recorded his No Objection to the grant of instant appeal.

15. Accordingly, instant Criminal Appeal is hereby allowed. Consequently, impugned judgment dated 09.11.2020, handed down by learned Additional District & Sessions Judge-IX, Karachi (South) in Sessions Case No.202/2019 (re: The State Vs. Deehraj Adan), being outcome of FIR No.10/2019 registered at Police Station Napier, Karachi, under Section 23(i)(a) of Sindh Arms Act, 2013, is hereby set aside and appellant Dheeraj Adan son of Malsi is acquitted of the charge. He is present on bail, therefore, his bail bonds are hereby cancelled and surety stands discharged.

JUDGE