

## IN THE HIGH COURT OF SINDH AT KARACHI

CrI. Appeal No. 91 of 2021

Appellant : Irfan Haider **Jaffari through Mr. Maulvi Iqbal Haider, Advocate.**

Respondents : The State through Mr. Faheem Hussain Panhwar, Deputy. P.G Sindh.

Date of hearing : 11<sup>th</sup> March 2021

Date of decision : 11<sup>th</sup> March 2021

### JUDGMENT

**SALAHUDDIN PANHWAR J.-** Appellant/accused has challenged the impugned judgment dated 02.02.2021 passed by learned 08<sup>th</sup> Additional Sessions Judge, Karachi East in Sessions Case No.56 of 2017 arising out of FIR No.487/2016, registered under sections 23(i) A Sindh Arms Act, 2013 at PS P.S. Aziz Bhatti, Karachi whereby the appellant was convicted under Section 265-H(ii) Cr.P.C for the offence punishable under Section 23(i) A of The Sindh Arms Act, 2013 and sentenced for two years. Fine of Rs.15,000/- (Rupees Fifteen Thousand Only) was also imposed upon the appellant/accused and in case of default thereof he was ordered to suffer S.I. for further one month. Appellant was extended benefit of Section 382-B, Cr.P.C.

2. Succinctly stated, the facts of the prosecution case are that on the tip-off, police apprehended present appellant and recovered one pistol alongwith 500 gram charas and fake police card, hence, he was arraigned to face three FIRs with regard to recovery of illicit arms, control of narcotics substances and impersonation.

3. After usual investigation, challan was submitted and accused was sent up to face the trial.

4. Charge was framed to which accused did not plead guilty and claimed to be tried.

5. In order to prove its case, prosecution examined Mashir PC Muhammad Sarwar as PW-1, at Exh. 04, and produced memo of arrest and recovery, memo of Site inspection, and entry No. 6 at 1840 hours at Exh. 4/A to Exh. 4/C respectively. Complainant ASI Noor Akbar as PW-2 at Exh. 5 and produced carbon copy of F.I.R., copy of entry No.7 at 0815 hours, and carbon copy of entry No. 63 at 1945 hours at Exh. 5/A to Exh. 5/C respectively, and I.O. SIP Azhar Ali as PW-3 at Exh.6 and produced carbon copy of letter for FSL, FSL report, copy of road certificate, carbon copy of entry No.65 at 2010 hours, carbon copy of entry No.66 at 2000 hours, carbon copy entry No.70 at 2250 hours, copy of entry No.12 at 1020 hours, and copy of entry No. 25 at 1530 hours dated 30.11.2016 of *roznamcha* Police Station Aziz Bhatti (both on one sheet) at Exh. 6/A to Exh. 6/G respectively. Thereafter, prosecution side was closed vide statement at Ex.09.

6. Statement of appellant/accused under section 342, Cr.P.C. was recorded wherein he denied the allegations leveled against him by the prosecution. He neither examined himself on Oath under Section 340(2) Cr.P.C nor adduced any evidence in his defence.

7. Thereafter, learned trial Court after full-dressed trial, convicted and sentenced appellant as mentioned above. Appellant being aggrieved and dissatisfied with the judgment has filed the instant appeal.

8. Learned counsel for the appellant, *inter alia*, contends that impugned judgment is bad in law and facts inasmuch as the learned trial Court did not appreciate the evidence on record in line with the applicable law and surrounding circumstances and based its findings as a result of misreading and non-reading of evidence as well arrived at a wrong conclusion in convicting the appellants. He also contended that there are material contradictions in the evidence of the prosecution witnesses and even the allegedly recovered weapon (pistol) was not produced before the Court during trial, but the learned Trial Court has not taken the same into consideration and passed the impugned judgment. He lastly contended that the prosecution has failed to discharge its liability of proving the guilt of the appellant beyond shadow of reasonable doubt and prayed for setting-aside the impugned judgment and acquittal of the appellant from charge.

9. In contra learned Deputy Prosecutor General Sindh contended that non-production of case property before the Court during trial was due to setting of fire at malkhana, benefit whereof, according to him, cannot be extended to the appellant. He next contended that prosecution has fully proved the guilt of the appellant through overwhelming evidence which remained unshaken, as such the learned trial Court has rightly held him guilty of the offence. He, therefore, sought dismissal of the appeal.

10. Heard and perused the record.

11. It is pertinent to mention that in criminal cases, the prosecution is bound to prove its case against the accused beyond reasonable doubt and if some doubt is created in the prosecution case, then the accused be acquitted not as a matter of grace but as a matter of right. Perusal of record reflects that admittedly recovered pistol was not produced before the trial court on the plea that property destroyed as *malkhana* was set ablaze, hence, neither the property was shown to the appellant as recovered from him nor such article was exhibited as produced. Besides, no mark of identification of weapon was shown; though recovery was effected near a public place but no independent person was joined as

witness. Non-production of weapon at trial is not disputed. Since weapon was neither produced nor confronted to the appellant as recovered from him, which has made the recovery memo and testimony of the recovery witnesses without any credence and has also destroyed the entire case of the prosecution.

12. In view of above, it cannot be safely held that the prosecution, *beyond reasonable doubt*, proved the charge against the appellant / accused hence benefit thereof needs to be extended in favour of the appellant. In result thereof, instant appeal stands allowed. The impugned judgment is set aside, appellant is acquitted and shall be set at liberty if not required in any other custody case.

JUDGE