

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

Cr. Appeal No.S-98 of 2018

Date of Hearing: 17.08.2020
Date of Judgment: 17.08.2020

*Appellant/accused: Khalid Lund S/o Bahadur alias
Abdullah Lund, through Mr. Sajjad
Ahmed Chandio, Advocate*

*The State: Mr. Shahzado Saleem Nahiyoon,
Deputy Prosecutor General.*

J U D G M E N T

NAIMATULLAH PHULPOTO, J,- Appellant Khalid Lund was tried by the learned Sessions Judge, Dadu, for offence under Section 25 of Sindh Arms Act, 2013. On the conclusion of the trial, vide judgment dated 24.04.2018, appellant was convicted under Section 25 of Sindh Arms Act, 2013 and sentenced to 05 years R.I and to pay the fine of Rs.10,000/-. In case of default in payment of fine, the appellant was ordered to suffer S.I for 02 months more. Appellant was extended benefit of Section 382(B) Cr.P.C.

2. Brief facts of the prosecution case as reflected in the impugned judgment are as under:-

“On 31.12.2017 complainant / ASI Ahmed Bux Brohi alongwith PC Shahan and PC Ali Akbar with arms and

ammunitions left Police Station in mobile with DPC Abdul Fatah vide Entry No.21 at 2200 hours for patrolling. During patrolling, when they reached at Government Girls College Curve, Dadu, it was about 0100 hours of 01.01.2018 when they saw and identified accused persons having Kalashnikov type 44 weapon in his hand and was making aerial firing who on seeing the police party tried to slip away but they alighted from the vehicle and apprehended said accused with Kalashnikov Type Rifle and four live bullets of 44 bore. On inquiry, apprehended accused disclosed his name as Khalid son of Bahadur alias Abdullah Lund. From personal search of accused, one mobile of black colour of Vigo Company was also secured from his pocket of shirt. The accused failed to produce the license of the weapon, hence, the complainant prepared mashirnama of arrest and recovery in presence of mashirs, namely PC Shahan and PC Ali Akbar and then he brought the accused and recovered property at Police Station, where FIR was lodged by him on behalf of the state.”

3. After usual investigation, the challan was submitted against the accused under Section 25 of Sindh Arms Act, 2013 before the competent Court of law.

4. Trial Court framed the charge against the accused under Section 25 of Sindh Arms Act, 2013 at Ex-02. Accused pleaded not guilty and claimed to be tried.

5. In order to prove the charge, prosecution examined P.W-1 complainant Ahmed Bux at Ex-5, who produced memo of

arrest and recovery, copy of F.I.R, departure and arrival entries and report of ballistic expert at Ex-5/A to 5/D respectively. P.W-2 PC Shahan was examined at Ex-6. Thereafter, prosecution side was closed.

6. Statement of accused was recorded under Section 342 Cr.P.C, in which the accused denied the prosecution allegations and raised plea that rifle / Kalashnikov involved in this case has been foisted upon him and it is a licensed weapon in the name of his brother and he is its retainer. Accused neither examined himself on oath nor led any evidence in his defence.

7. Trial Court after hearing the learned Counsel for the parties and on assessment of the evidence, vide judgment dated 24.04.2018, convicted and sentenced the appellant as stated above.

8. Mr. Sajjad Ahmed Chandio, learned Advocate for the appellant has mainly contended that the main case bearing Crime No.01 of 2018 under Sections 188 & 337-H(ii) PPC was not challaned by the Police before the competent Court of law and this case is offshoot of the aforesaid crime and prosecution has failed to prove it at the trial. It is submitted that according to the case of the prosecution, the aerial firing was made by the appellant but admittedly from the place of incident the empties were not recovered. It is further argued that there was no evidence that the alleged weapon was kept at Police Station in safe custody and it was safely transmitted to the ballistic expert.

Delay in sending weapon to the ballistic expert has also been highlighted. It is argued that description of the weapon mentioned in the mashirnama is different from the description given by the ASI / complainant in his evidence. Lastly, it is argued that the Investigation Officer did not bother to verify about the license holder and prayed for acquittal of the appellant in this case.

9. Mr. Shahzad Saleem Nahiyoan, learned Deputy Prosecutor General conceded to the contentions raised by learned Advocate for appellant and did not support the impugned judgment passed by trial Court.

10. The facts of this case as well as evidence produced before the Trial Court find the elaborate mention in the judgment passed by the Trial Court dated 24.04.2018, hence, the same need not to be repeated here so as to avoid duplication and un-necessary repetition.

11. I have carefully perused the evidence minutely with the assistance of the learned Counsel for the parties and have come to the conclusion that prosecution has failed to establish its case against the appellant. It is a matter of the record that the main case bearing F.I.R No.01 of 2018 was registered against the appellant at Police Station A-Section, Dadu, but said case was not challaned against the appellant before the competent Court of law. The prosecution story appears to be unnatural and unbelievable. It is the case of the prosecution that the accused made aerial firing at the time of incident but no empty was

recovered from the place of incident. Even no private person around the place of incident was examined by the prosecution. After arrest of the accused, no efforts were made by the complainant / I.O, to ascertain about the license holder of the weapon because it was a licensed weapon in the name of the brother of the appellant and appellant had raised plea that he is the retainer of the said weapon. The I.O / complainant in his evidence has mentioned that the number of rifle like Kalashnikov is B-4457; whereas, the mashirnama of arrest and recovery reflects that its number is B-4557. I have also looked into the report of the ballistic expert, which reflects that the ballistic expert had received a sealed parcel through HC Ghulam Abbas of P.S A-Section District Dadu. The said Head Constable and Incharge Malkhana have also not been examined by the prosecution to establish the safe custody and safe transmission of weapon to expert. In the case of KAMAL DIN alias KAMALA v. The STATE (2018 SCMR 577), the Honourable Supreme Court on the point of safe custody and safe transmission of weapon has held as under:

“4. As regards the alleged recovery of a Kalashnikov from the appellant's custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice it to observe that Muhammad Athar Farooq DSP/SDPO (PW18), the Investigating Officer, had divulged before the trial court that the recoveries relied upon in this case had been affected by Ayub, Inspector in an earlier case and, thus, the said recoveries had no

relevance to the criminal case in hand. Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission.”

12. Further, there are several circumstances in this case, which have created doubt in the prosecution case. It is well settled law that it is not necessary that there should be many circumstances creating doubts. If there is single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right as held by the honourable Supreme Court in the case of MUHAMMAD MANSHA v. THE STATE (2018 SCMR 772) which reads as under:-

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique

Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”

13. For the above stated reasons, I have come to the conclusion that prosecution had failed to prove its case against the appellant. Thus, by extending benefit of doubt, this appeal is allowed. Conviction and sentence recorded by the Trial Court, vide judgment dated 24.04.2018, are *set aside*. Appellant is acquitted of the charge. He is present on bail, his bail bond stands cancelled and surety discharged.

JUDGE

Shahid