

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Criminal Acquittal Appeal No. S – 94 of 2018**

Appellant : The State through Mr. Aftab Ahmed Shar, Additional Prosecutor General Sindh

Private respondent : Nemo

Date of decision : 21.08.2020

**JUDGMENT**

**AFTAB AHMED GORAR, J.-** Through instant Criminal Acquittal Appeal, the appellant/ the State has impugned judgment dated 17.01.2018, passed by learned Additional Sessions Judge (Hudood) Sukkur, whereby the private respondent has been acquitted of the offence outcome of FIR Crime No.117/2015 registered at Police Station Salehpat for offence punishable under Sections 23(i)(a) Sindh Arms Act-2013.

2. The facts of the prosecution case, in brief, are that on 25.11.2015 the complainant HC Sikander Ali Dahri lodged the FIR at Police Station Salehpat on behalf of the State, stating therein that on the date of alleged incident, he along with his subordinates were on patrolling duty, at 1940 hours, he received spy information that the required accused in Crime No.114/2015 u/s 324, 34 PPC of Police Station Salehpat namely Syed Mujahid Shah is waiting for convenience at Taj Fish Farm, therefore, they immediately rushed to the pointed place accompanied by the private mashirs namely Muhammad Hayat and

Pervez Ahmed, when at 2000 hours reached there and apprehended the private respondent and on his person search one pistol along with magazine of 30 bore along with 04 live bullets and cash of Rs.300/- was recovered, whereas, the accused could not produce any valid licence for the said pistol, thereafter, such mashirnama was prepared and the accused along with the recovered weapon was brought at police station and such FIR was registered on behalf of the State.

3. After registration of the FIR and usual investigation, the private respondent was challaned to face his trial before the Court of Law.

4. At trial, the private respondent did not plead guilty to charge and the prosecution to substantiate its case, examined PW-1/I.O ASI Jamaluddin Hakro at (Ex.04), who produced unattested copy of chemical examination report; PW-2 complainant HC-Sikander Ali at (Ex.5), who produced attested cpy of entry, mashirnama of arrest, search and recovery and copy of FIR at (Ex.5/A to 5/C) respectively; PW-3 mashir Muhammad Hayat at (Ex.6). Thereafter the learned DDA filed statement at (Ex.7) given up the official eye witnesses / mashirs namely PC Noor Khan and PC Saeed Khan so also closed the side of prosecution.

5. The private respondent during the course of his examination u/s 342 Cr.PC denied the prosecutions' allegation by pleading innocence by stating that he was arrested bare handed and such news was published in the daily Kawish Hyderabad and the alleged weapon has been foisted

upon him malafidely at the instance of complainant just to strengthen the main case.

6. The learned trial Court after hearing both the parties, learned DDA and on evaluation of evidence so produced by the prosecution, the learned trial Court acquitted the private respondent of the offence for which he was charged by way of impugned judgment, as stated above.

7. It is contended by learned Additional PG appearing for the State /appellant that the learned trial Court has not considered the material available on record, whereas, there was recovery of unlicensed pistol along with bullets from the private respondent; that the version of the complainant as setout in the FIR is fully supported by the private mashir Muhammad Hayat. It is lastly contended that the judgment passed by the learned trial Court may be set-aside and the private respondent shall be convicted.

8. I have considered the above arguments and perused the record. The perusal of impugned judgment, it appears that there are material infirmities in the evidence of the complainant HC Sikander Ali and private mashir Muhammad Hayat. As per FIR two private mashirs namely Muhammad Hayat and Pervez Ahmed were associated from the place where the police party received spy information regarding the availability of the private respondent, whereas, the evidence of complainant in this regard is silent. The complainant HC-Sikander Ali has stated in his examination-in-chief that he had prepared the

mashirnama at the spot under the light of torch in standing position and consumed one hour in whole process, whereas, the private mashir Muhammad Hayat has given quite contradictory statement that the mashirnama was prepared on the road on clip board and police only consumed five minutes in the entire process. Further the complainant has stated that he along with his subordinates and private mashirs returned to police station, whereas, the private mashir has falsified his version and has stated that they (both mashirs) were dropped by the police near Choondki road. The complainant has stated that he had affixed two seals with stamp of seal Muhar with his signature on the sealed case property parcels separately, but in his cross-examination he has admitted that the parcel which has been produced in Court does not bear his signature or any such seal. In such circumstances, it is observed that the case of the prosecution is full of contradictions, as the police officials i.e. complainant HC Sikander Ali and private mashir Muhammad Hayat have not supported each other on material aspects of the incident, therefore, the learned trial Court has rightly recorded acquittal of the private respondent. The private respondent has also been acquitted from the case Crime No. 114/2015 of Police Station Salehpat by the trial Court. In this regard, reliance is placed upon the case of ***Muhammad Akram vs. The State (2009 SCMR 230)***, wherein it ***has been held by the Honourable Supreme Court that;-***

*“13. The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that*

*in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345, that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as matter of grace and concession but as matter of right.”*

9. For what has been discussed herein above, I am of the view that there are material contradictions in the evidence of prosecution witnesses, and there is nothing on record which may suggest that the impugned judgment is arbitrary or cursory to be interfered with by way of instant Criminal Acquittal Appeal. Accordingly, the instant Criminal Acquittal Appeal is dismissed.

Judge

ARBROHI