

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Jail Appeal No.S-168 of 2019

For hearing of Main Case

Mr. Achar Khan Gabol Advocate for the Appellant.
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

Date of Hearing: **16-07-2021**

Date of Short Order: **16-07-2021**

J U D G M E N T

MUHAMMAD SALEEM JESSAR J. Through this Criminal Jail Appeal, appellant Shah Murad alias Gulzar has challenged the Judgment dated 17.08.2019, handed down by the learned Additional Sessions Judge, Mirwah in Sessions Case No.225 of 2015 re:- State-Versus Shah Muhammad alias Gulzar, arising out of Crime No.99 of 2014, of P.S, Faiz Ganj, whereby he convicted the appellant for offence punishable under Section 24 of Sindh Arms Act, 2013 and sentenced him to suffer R.I. for 07-years and to pay fine of Rs.50,000/- and in case of non-payment of fine, to undergo S.I. for 06-months more with benefit of Section 382-B Cr.P.C.

2. Succinctly the facts of the prosecution case as unfolded in the FIR are that on 17.07.2014 at 0930 hours, at Devi Babul trees (Acacia) near Sanjhaho bridge curve situated at link road leading from Karoondi towards Sanjhaho, accused already arrested in main case Crime No.96 of 2014, under Sections 302, 324, 337H(2), 147, 148 & 149 PPC of P.S, Faiz Ganj, who during interrogation confessed, voluntarily led the

police party and produced one unlicensed .44 bore rifle in presence of police mashirs. Consequently, appellant and recovered property were brought at P.S, where above FIR was lodged on behalf of the State.

3. Learned counsel for the appellant submits that appellant and co-accused Muhammad Bachal were booked in Crime No.96 of 2014 of P.S, Faiz Ganj under Sections 302, 324, 337H(2), 147, 148, 149 PPC, and were subsequently tried by learned Additional Sessions Judge, Mirwah vide Sessions Case No.228 of 2015 re: State-Versus Shah Murad alias Gulzar and another, and, both accused have been acquitted of the charges of said main case, therefore, instant case being off-shoot of said main case deserves to be acquitted in this case also. In support of his contentions, he has placed reliance on the case of *Manjhi v. The State (PLD 1996 Karachi 345)*.

4. Learned DPG opposed instant appeal; however, could not controvert the fact that appellant and co-accused have been acquitted from the charge of main case, besides there are glaring contradictions, infirmities and discrepancies in the evidence adduced by the prosecution. Learned DPG was confronted with the Forensic Science Laboratory report dated 11.08.2014, which reveals that the weapon alleged to have been recovered from the appellant Shah Murad alias Gulzar was received by Laboratory on 08.08.2014 though the distance between police station and Larkana Laboratory would hardly be 90-kilometers. The delay so occasioned in sending the weapon to the laboratory has not been explained or justified by the prosecution. In

para-5 of the opinion of laboratory available at page-53 of the paper book, where .12 bore crime empties marked as c-6 and c-9 is shown to have not been fired from the weapons/.12 bore repeater and .12 bore DBBL shotgun and same are **dissimilar**.

5. Heard arguments and perused the record. I have gone through the evidence adduced by the prosecution and found that I.O of the case, namely, SIP Khan Muhammad Shar did not depose even a single word that he sent the weapon allegedly produced by the appellant to the laboratory and on which date. He also admitted that he maintained departure entry No.6 at the time of leaving P.S towards place of recovery; however, he did not produce copy of same at the time of recording his evidence before trial Court and further admitted that arrival entry was not maintained by him. It further appears from evidence that he (I.O) recovered weapons from three accused at the same moment; however, a joint memo was written down by him in respect of three FIRs vide Crime Nos. 99, 100 and 101 of 2014. He has made contradiction to the effect that he himself had sealed the weapons on the spot; however, in cross he had admitted that Munshi was sealing the weapons. On the other hand, recovery Mashir, namely, Muhammad Janib, who happens to be Mashir of all recoveries, was unaware of the distance between P.S as well as place of recovery. Per his statement, he originally resides in Kandhkot as well as Rohri and did not justify his consecutive presence at the place of recovery as well

as arrest. In his cross (page-47 of the paper book), he categorically admitted in the following words:-

“I do not know whether contents of documents were read over to me or not”.

He further admitted in his cross that he did not disclose exact number of empties to have been recovered by the I.O. from the place of incident/recovery.

6. Perusal of page-53 of the paper book, it is an examination report with regard to the Forensic laboratory, which reveals that the weapons were received by the laboratory on 08.08.2014 though per memo of recovery same were recovered on 17.07.2014 and delay of about 23-days has not been justified by the prosecution nor I.O did depose in whose custody weapons were given during intervening period. The delay so occasioned in sending the weapons to the laboratory casts fatal blow to the prosecution case and such inordinate delay cannot be ignored easily.

7. In view of the above discrepancies and major contradictions in the statements of PWs, I am of the view that the prosecution has not come with its clean hands. Thus, a serious doubt has been created which always go to favour the accused. It is settled law that even slightest doubt if arises in the prosecution evidence must be extended in favour of the accused. Reliance can be placed upon the case of Tariq Pervez v. The State **(1995 SCMR 1345)**.

8. Moreover, instant case is outcome of main Crime No.96 of 2014, under Sections 302, 324, 337H(2), 147, 148 & 149 PPC of P.S, Faiz Ganj, in which appellant has been acquitted of the charge by way of Judgment dated 25.06.2021, penned down by learned Additional Sessions Judge, Mirwah vide Sessions Case No. 228 of 2015 re: State-Versus Shah Murad and another. The dicta laid down by this Court in the case of Manjhi (Supra) was followed by the learned Bench at Lahore High Court in the case of Yasir Chaudhry v. The State and another **(2012 MLD 1315)**, in following words:

“5. In the case reported as Manjhi v. The State (PLD 1996 Kar. 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 of 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. Resultantly, the proceedings before the learned trial Court are quashed.”

9. Accordingly and in view of above legal position, instant Jail appeal was allowed by a short order dated 16.07.2021, whereby impugned judgment dated 17.08.2019 penned down by learned Additional Sessions Judge, Mirwah vide Sessions Case No.225 of 2015 re: State-Versus Shah Murad alias Gulzar being outcome of FIR No.99 of 2014 of P.S, Faiz Ganj, under Section 24(1)(A) of Sindh Arms Act, 2013

was set aside and the appellant Shah Murad alias Gulzar was ordered to be acquitted of the charge. Appellant was in custody and he was directed to be released forthwith if his custody was no longer required by the jail authorities. These are the reasons in support of said short order.

10. Crl. Jail Appeal No.S-168 of 2019 stands disposed off.

J U D G E

Ahmad